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WITHHOLDING OF INFORMATION
FROM THE CONGRESS

A SURVEY
BY THE
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE



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PREFACE BY SENATOR THOMAS C. HENNINGS, JR.

The comments presented herein were received from Members of the Senate by the Subcommittee on Constitutional Rights in the course of its current study on "Freedom of Information and Secrecy in Government."

The information presented in these letters brings up to date a similar survey made by this subcommittee in 1956 on the problem of withholding of information from Congress. Replies from that survey, which covered a 2-year period from 1954 through 1956, have already been printed in "Freedom of Information and Secrecy in Government: Part 1" (pp. 287-428). This volume contains the testimony of the Attorney General of the United States on "S. 921 and the Power of the President To Withhold Information From Congress." The results of the 1956 survey have proved informative and useful to both Congress and the public. In addition to clarifying problems faced by Congress and the executive branch in this area, they also illustrated the use of the many statutes and the various constitutional law doctrines, such as executive privilege, on which executive department and agency officials rely when they withhold information.

In an effort to meet the demand for current information on experiences of Congress with these problems, I initiated the present survey.

As chairman of the Constitutional Rights Subcommittee I sent the following letter to every Member of the Senate:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
Washington, D.C.

DEAR SENATOR —: The Senate Judiciary Subcommittee on Constitutional Rights is continuing its 4-year study of withholding of information from the Congress by executive departments and administrative agencies.

As part of this study, the subcommittee in May 1956, made a survey, you may remember, among the chairmen of Senate committees and subcommittees to learn about occasions when information had been refused their committees and the reasons for such refusals. The replies were extremely helpful to this subcommittee and, we are told, to Members of the Senate, in work on freedom of information and secrecy in Government matters. Results of the survey, along with a summary analysis of the replies, were printed in the appendix to the record of a hearing by the Senate Constitutional Rights Subcommittee on March 6, 1958, on "S. 921 and the Power of the President To Withhold Information from the Congress: Part 1," "Freedom of Information and Secrecy in Government," at pages 287-428. Incidentally, our supply of that volume has long since been exhausted.

This inquiry is to bring our study up to date.

From your experience as a U.S. Senator, chairman, or member of committees and subcommittees, can you give instances to this subcommittee of information withheld by executive departments and administrative agencies? If there have been such instances, what have been given as reasons for the refusals?

Your cooperation in this study is appreciated.

With kind regards, I am,

Sincerely yours,

THOMAS C. HENNINGS, Jr., *Chairman.*

The replies to this letter have been so helpful to the subcommittee in its work on the important subject of "Freedom of Information and Secrecy in Government" that it seemed appropriate to have them printed and made available to Members of the Congress and to the American people.

THOMAS C. HENNINGS, Jr., *Chairman.*

AUGUST 19, 1960.

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WITHHOLDING OF INFORMATION FROM THE CONGRESS

REPLIES OF U.S. SENATORS

SENATOR GEORGE D. AIKEN

MAY 17, 1960,

DEAR TOM: Your letter of May 3 is at hand.
I have no specific instance to report at this time.
Best regards.

Sincerely yours,

GEORGE D. AIKEN.

SENATOR GORDON ALLOTT

MAY 9, 1960.

DEAR TOM: I have your May 3 letter and while there have been a number of examples of use of the so-called Executive privilege with which I am familiar, I was not personally or intimately involved in any of them and can furnish no helpful information to your subcommittee.

Best regards.

Sincerely yours,

GORDON ALLOTT, *U.S. Senator.*

SENATOR CLINTON P. ANDERSON

MAY 13, 1960.

DEAR SENATOR HENNINGS: Thank you very much for your letter of May 3, 1960, concerning your Subcommittee on Constitutional Rights' 4-year study of withholding of information from the Congress by executive departments and administrative agencies.

We are looking into this situation as it applies to the Joint Committee on Atomic Energy and we will advise you of our findings as soon as possible.

Sincerely yours,

CLINTON P. ANDERSON, *Chairman.*

SENATOR CLINTON P. ANDERSON

SEPTEMBER 12, 1960.

DEAR SENATOR HENNINGS: Thank you for your letter of May 3, 1960, requesting information in connection with your Subcommittee on Constitutional Rights' 4-year study on withholding of information

from the Congress by the executive departments and administrative agencies.

As you know, under section 202 of the Atomic Energy Act of 1954, as amended, the law requires that—

“The Commission (Atomic Energy Commission) shall keep the Joint Committee fully and currently informed with respect to all of the Commission’s activities. The Department of Defense shall keep the Joint Committee fully and currently informed with respect to all matters within the Department of Defense relating to the development, utilization, or application of atomic energy. Any Government agency shall furnish any information requested by the Joint Committee with respect to the activities or responsibilities of that agency in the field of atomic energy.”

Over the past 2 years a progressively better working relationship has been developed between the AEC and the Joint Committee as to keeping the committee informed. However, there have been a few situations where the AEC has not agreed to arrangements as to access by the Joint Committee to certain AEC documents necessary for its legislative purposes. In connection with developing mutually acceptable procedures, we requested that the AEC make a determination to allow the Joint Committee access to such particular General Advisory Committee reports as may be necessary for specific studies by the committee. This request was made in December 1959, but we have not been advised of AEC’s agreement on this point to date.

Another case involved the basis of a recent contract awarded for the construction of an atomic power reactor, which was submitted to the Joint Committee for review as required by statute in connection with the AEC power reactor demonstration program. The Joint Committee requested the AEC to provide a complete record of the selection of the equipment company because of possible irregularities in the selection process. The Commission has postponed a decision on making the requested information available to the committee pending a reexamination of the selection on its own account because of mistakes in AEC computations of the bidders. In the meantime AEC withdrew its submission of the basis of the contract for review by the committee.

I regret to report that we have encountered increasing difficulty with the Department of Defense in keeping the Joint Committee fully and currently informed as required by section 202 of the statute. In this connection I recently had the Joint Committee staff prepare for me a summary of items in which the Defense Department has not met its statutory responsibilities. For your information I am attaching a copy of that summary.

Sincerely yours,

CLINTON P. ANDERSON, *Chairman.*

SUMMARY OF ITEMS IN WHICH THE DEFENSE DEPARTMENT DID NOT
KEEP THE JOINT COMMITTEE "FULLY AND CURRENTLY INFORMED"

Prepared by the Staff of the Joint Committee on Atomic Energy
June 23, 1960

In accordance with the request of the chairman, following is a list and brief explanation of some of the items in which the JCAE was not kept fully and currently informed by the Department of Defense as required by section 202 of the Atomic Energy Act of 1954:

(1) *Weapons custody arrangements*

On November 25, 1959, the special assistant to the Secretary of Defense for atomic energy requested and obtained an informal meeting with two members of the Joint Committee on Atomic Energy and the committee staff at which time he for the first time orally advised of a proposed arrangement with an allied nation for the use and custody of an American air-to-air nuclear weapon.

Based on subsequent inquiries and executive hearings of the Joint Committee, it appears that the planned arrangement had been discussed with the allied nation some time early in 1958 and the recommendation for the arrangement made by the Joint Chiefs of Staff in April of 1959. It was also determined that the DOD, by letter dated June 17, 1959, specifically proposed to the Secretary of State that such an arrangement be entered into and the State Department, by memorandum dated September 28, 1959, had concurred. None of this had been brought to the Joint Committee's attention prior to November 25, 1959.

During the development of the above information, the Joint Committee chairman, by letter dated January 20, 1960, raised a number of questions concerning proposed custody arrangements for other weapons systems including the Thor surface-to-surface IRBM missiles. The Defense Department responded by letter dated January 28, 1960, at which time the committee was informed that three squadrons for missiles already had been transferred to the United Kingdom—the first squadron as early as June 1959.

The DOD's January 28, 1960, letter in general described the concept of the two-key arrangement which also represented the first such notice to the Joint Committee. No mention was made in this correspondence of the planned Jupiter IRBM transfer to Turkey and Italy, but in response to the question "Do we have any other missile, IRBM or otherwise, assigned to NATO that have nuclear weapons?" the January 28, 1960, correspondence from the Secretary of Defense made reference to the Honest John assigned as part of an allied nation's forces. Subsequently, in a March 7, 1960, informal briefing of the committee by General Loper, specifically requested by the committee and in response to specific questions, General Loper acknowledged that the two-key system with the warhead affixed to the IRBM Jupiter missiles would similarly be arranged in Turkey and Italy.

(2) *Project VELA*

During the hearings on the "Technical Aspects of Detection and Inspection of a Nuclear Weapons Test Ban," April 19-22, 1960, testimony was received from a representative of ARPA on Project VELA, a program for increasing basic research in seismology, along the recommendations of the Berkner Panel. At the time of the hearings, the Defense Department had not determined the level of support for this project for fiscal year 1961. The committee prepared its summary-analysis of the hearings and during the week of May 1 met with representatives of the State Department, DOD, and AEC in order that they might have a copy of the draft summary-analysis prior to its public release. On May 4 and 5, copies of the final draft were made available to the Defense Department representatives, as well as representatives from AEC and State Department, at which time they were informed of the committee's intention to release to the press, copies for Monday, May 9, release. On Saturday, May 7, the Joint Committee staff began to receive inquiries from newspaper reporters concerning a release made that day as to Project VELA and the level of support it would receive in fiscal year 1961. Subsequently, the staff by request received a copy of a prepared press statement of that date, issued by James C. Hagerty, press secretary to the President, which discussed the program and the intention to detonate nuclear explosions in furtherance of the program.

The release the JCAE staff subsequently determined originated with the Defense Department and was coordinated with the State Department on a rush basis May 6. The Defense Department at no time alerted the Joint Committee as to its intentions of issuing a release notwithstanding they had been informed of the committee's planned Monday, May 9, release.

(3) *Project Orion*

This is a project involving the use of nuclear explosive devices for rocket propulsion and theoretically would be used for space propulsion. On the basis of limited information we presently have, this project was originated in the summer of 1958 by ARPA in response to a proposal by General Dynamics. The initial funding amounted to \$1 million and an additional extension of \$400,000 also was provided through the Air Force. While we do not know the full funding to date, \$1 million apparently was available in 1960 for this project.

The first information received from the Defense Department concerning this project was a letter dated February 17, 1960, from General Loper. This was in response to a written staff inquiry to him dated January 8, 1960, making reference to news articles of this project.

(4) *SNAP projects*

Although we have been kept informed by the AEC of some of the Commission's work in this field (satellite nuclear auxiliary power), the Defense Department, through the Air Force, reportedly has within this past year solicited studies for SNAP reactors. We understand, for example, that the Air Force has solicited bids for a study of a 300-kilowatt SNAP reactor power supply of which we have not been

informed. A number of other SNAP projects for military purposes also are under development of which we have not been informed.

(5) *Compact mobile nuclear powerplants*

On June 9, 1958, DOD formally requested the AEC to develop a compact mobile nuclear powerplant with a specified electrical output for which they set a military requirement. It appears information concerning this specific plant and requirement was first made available to the Joint Committee by letter dated August 1, 1959, from the AEC.

(6) *Press conference on nuclear weapons safety*

On June 15, 1960, the Department of Defense sponsored a press conference at the Pentagon to discuss the problem of safety of nuclear weapons. The DOD informed the Joint Committee on Atomic Energy of this by letter dated June 16, 1960, a day after the fact.

SENATOR E. L. BARTLETT

MAY 17, 1960.

DEAR CHAIRMAN HENNINGS: This will acknowledge your letter of May 3 which had to do with the study of the subcommittee on the withholding of information from the Congress by executive departments and administrative agencies.

I have no examples of such bearing directly on the subject to call to your attention. My experiences have been related, but not direct. What I mean by this is that on many occasions the executive departments have taken action on matters of great importance to Alaska without consulting beforehand at all the Members of the Alaskan congressional delegation. Frequently, we learn of such decisions by reading the papers; on other occasions, particularly affecting the Military Establishment, civilians in Alaska are given information by friends in the military department there and we learn from them of decisions of consequence in the defense setup in Alaska.

Sincerely yours,

E. L. BARTLETT.

SENATOR WALLACE F. BENNETT

MAY 6, 1960.

DEAR TOM: In response to your letter of May 3, I do not recall at the moment any cases of withholding information of the executive branch where there has not been some ostensibly sound reason for withholding the information.

Most commonly, of course, the problem is that a decision has not been finally reached in an agency, and I think it is understandable that the release of information must be delayed until the matter in question has been thoroughly ironed out within the agency or bureau involved. Other cases involve withholding of information because of a desire to make a general release at a particular time rather than releasing something piecemeal to whomever may happen to ask for it. Here again, I think the policy is generally justified.

I have no doubt that there have been unwarranted instances of withholding of information by the executive branch, but as a general rule, I feel the administration has been very cooperative with the committees on which I have served as a Senator.

Sincerely,

WALLACE F. BENNETT.

SENATOR ALAN BIBLE

MAY 25, 1960.

DEAR SENATOR HENNINGS: This will reply to your letter of May 3 wherein you seek certain information as a part of your continuing study of the withholding of information from the Congress by executive departments and administrative agencies.

I cannot recall any instance where information has been withheld by executive department and/or administrative agencies in requests that I have made as an individual Senator or as a subcommittee or committee chairman.

With best regards.

Cordially,

ALAN BIBLE.

SENATOR NORMAN BRUNSDALE

MAY 6, 1960.

DEAR SENATOR HENNINGS: This will acknowledge and thank you for your letter of May 3 in which you ask if I have encountered any instances of information being withheld by executive departments or administrative agencies.

During the limited time I have been here, I have experienced no such instance.

Sincerely yours,

NORMAN BRUNSDALE,
U.S. Senator.

SENATOR HARRY F. BYRD

MAY 10, 1960.

MY DEAR TOM: Answering your letter of May 3, I have had no instances wherein the executive branch of the Government has withheld information from any committee in which I am connected.

With kind regards, I am

Faithfully yours,

HARRY F. BYRD.

SENATOR ROBERT C. BYRD

SEPTEMBER 2, 1960.

DEAR MR. CHAIRMAN: I have received your letter regarding your subcommittee's study of withholding of information from the Congress by executive departments and administrative agencies.

I appreciate your letter; however, I have no comment to make regarding the subject matter.

With kind regards.

Sincerely yours,

ROBERT C. BYRD,
U.S. Senator.

SENATOR HOWARD W. CANNON

MAY 11, 1960.

DEAR SENATOR HENNINGS: In regard to your inquiry of May 3 concerning information withheld by executive departments and administrative agencies, my office has encountered one instance of particular relevance to the subject.

On or about March 24, 1959, my office contacted Mr. Guilford Jameison, Deputy Director of the Congressional Liaison Staff for the International Cooperation Administration. I was refused a copy of the Babcock report, a study on internal reform of the Laos delegation of ICA. My office was informed that the document had been classified top secret because it was an internal evaluation report that would do great harm to our foreign policy if published. No further effort was made to obtain the report.

I hope that the above information will be of some assistance in your study on freedom of information and secrecy in Government matters.

Kindest personal regards,

Sincerely,

HOWARD W. CANNON.

SENATOR JOHN A. CARROLL

AUGUST 29, 1960.

DEAR TOM: It is a matter of common knowledge that information is repeatedly denied to Congress, to its accounting arm, the General Accounting Office, and to the press. Whether on grounds of security or executive privilege, denial has too often been used as a cloak to hide irregularities and incompetence.

The evidence turned up during the Strauss hearings; the calculated confusion and obstruction of the Dixon-Yates investigations; the denial of the International Cooperation Administration area evaluations to the General Accounting Office—these are but examples of practices which are all too common in our commissions and agencies today.

It should be made very clear that access to information is not a privilege granted by the administration; it is a right held by the people, their press, and their Congress.

Kindest regards.

Sincerely,

JOHN A. CARROLL.

SENATOR FRANCIS CASE

AUGUST 29, 1960.

DEAR SENATOR HENNINGS: In response to the inquiry from your subcommittee, there have been no significant instances where information I have requested from executive departments and administrative agencies has been withheld by the departments.

With kind regards,
Sincerely yours,

FRANCIS CASE, *U.S. Senator.*

SENATOR JOHN SHERMAN COOPER

MAY 10, 1960.

DEAR MR. CHAIRMAN: Thank you for your letter of May 3, inviting me to present instances when I have been refused information by executive departments and administrative agencies.

I can think of no occasion when an executive department or administrative agency has not made available to me information that I thought should have been made available to me.

With kind regards, I am,
Sincerely yours,

JOHN SHERMAN COOPER.

SENATOR PAUL H. DOUGLAS

JUNE 1, 1960.

DEAR TOM: Recently you inquired about the difficulties that congressional committees might be having in securing information from executive departments and administrative agencies.

I asked the staff of our Joint Economic Committee to review their files for any such information, and the enclosed memorandum from John Lehman of that staff is all that we could turn up.

I hope this is helpful to your inquiry.

With kindest regards,
Faithfully yours,

PAUL H. DOUGLAS.

(The memorandum follows:)

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
May 24, 1960.

Memorandum to Senator Douglas.

From: John W. Lehman.

Subject: Request from Senator Hennings of the Senate Judiciary Subcommittee re withholding of information by executive departments.

In response to your request, we have made a quick run through the files of the committee and the recollections of the staff to see if there were any occasions of withholding of information from the committee by executive departments and administrative agencies.

We can find no clean-cut instance when this kind of action has occurred. There has never been any attempt to subpoena materials nor has there been, as far as we can tell, any actual refusal to produce

information requested by the committee or its subcommittees. There has at times been some confusion about the time it took or would take to prepare these materials or about the form in which they were to be supplied.

Mr. Patton, for example, as recently as May 13, was still corresponding with the Treasury about his request of July 24, during the hearings on employment, growth, and price levels, for factual information concerning the percentage of securities which have been purchased from the Treasury by the biggest purchasers of securities. He asked at that time for the later submission of a list of each of the 50 biggest purchasers of securities from the Treasury over the past 2 years, and designated certain categories in which he would like them classified. He also asked for the total amount in each issue which each of these companies offered to subscribe and the amount that all commercial banks in the country offered to subscribe to each issue, the amount of the allotments to all commercial banks, and the offers and allotments for each of the 50 largest commercial banks. He then designated a number of other types of institutions for which he would like similar information.

Secretary Anderson supplied the materials he had available on a group basis which showed allotments by investor classes and related information at the time the hearings were printed and has been in correspondence with Mr. Patton since about the additional details requested. Apparently there is still some confusion about exactly what was wanted and a reluctance on the part of the Treasury to spend the \$4,000 required for additional analysis without knowing a little more precisely the needs. But the Treasury still has not refused to supply the information.

SENATOR ALBERT GORE

SEPTEMBER 7, 1960.

DEAR SENATOR HENNINGS: I have received your letter requesting that I furnish to the subcommittee information concerning instances in which the executive agencies may have withheld information which I have requested either individually or as a member of a Senate committee.

I have found the executive agencies, for the most part, cooperative in supplying information which I have requested and I do not believe I can cite any incident which can be of value to your subcommittee in making its present study.

Sincerely yours,

ALBERT GORE.

SENATOR CLAIR ENGLE

MAY 9, 1960.

DEAR MR. CHAIRMAN: Thank you for your letter of May 3, 1960, in regard to your subcommittee's 4-year study of withholding of information from the Congress by executive departments and administrative agencies.

I note your request that I supply your subcommittee with instances in which information has been withheld by executive agencies. I know that this has occurred on numbers of occasions, but there has

been no instance in which I have been directly involved, wherein I have been personally refused information sought from the executive branch.

Every good wish in this important study.

With best personal regards,

Sincerely yours,

CLAIR ENGLE, *U.S. Senator.*

SENATOR J. W. FULBRIGHT

MAY 23, 1960.

DEAR SENATOR: This is in reply to your letter of May 3, 1960, in which you ask me to furnish instances of information withheld by executive departments and administrative agencies since 1956.

There is attached correspondence and other material with respect to two such instances: (1) a request to the Department of Defense for a copy of General Carroll's report on Armed Forces black market activities in Turkey and (2) a request by Senator Mansfield, as chairman of the Subcommittee on State Department Organization and Public Affairs, to the International Cooperation Administration for an evaluation report on Vietnam. Senator Mansfield has asked me to include this instance in this report.

I am informed that Senator Humphrey will furnish you directly with information relating to such instances as may have occurred in the Disarmament Subcommittee.

Please feel free to call on me if I can be of further assistance.

Very truly yours,

J. W. FULBRIGHT, *Chairman.*

(Following is the correspondence between Senator Fulbright and the Department of Defense relating to a report on Armed Forces black market activities in Turkey:)

OCTOBER 22, 1959.

HON. NEIL MCELROY,
Secretary of Defense,
Washington, D.C.

DEAR MR. SECRETARY: I have had several letters on the subject of alleged black marketing by U.S. military personnel in Turkey and alleged mistreatment of some U.S. military personnel by the Turkish authorities.

I would appreciate having a report from you on this subject, discussing the problems involved, with appropriate review by the Department of State, including a discussion of the following matters:

1. Your estimate of the extent, if any, of black-market activities by U.S. personnel in Turkey. I would appreciate an estimate of the number of personnel who might be involved and some estimate of the amount of illegal profit, if any. I would appreciate knowing what the Department of Defense may know about the transfer by military personnel of assets to Swiss banks. Your estimate of the effect of the black-market operations on the Turkish economy will also be useful.

2. I would appreciate your appraisal of the operations under the NATO Status of Forces Agreement in Turkey, and the status of U.S. request for waiver of Turkish jurisdiction.

3. The effect of U.S. relations with Turkey of the charges, arrests, and the publicity attending the Izmir situation.

4. The need, if any, for additional legislation to remedy existing deficiencies. I have in mind, particularly, a possible need for additional authority for payment of some or all of salary and allowances for military personnel in local currency in those situations where payment of such items in dollars leads to trouble.

Meanwhile, I would appreciate having a copy of the report on the Izmir situation prepared by Major General Carroll.

Very truly yours,

J. W. FULBRIGHT, *Chairman.*

OFFICE OF THE SECRETARY OF DEFENSE,
Washington, D.C., November 23, 1959.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: I had hoped to talk to you personally with respect to your letter of October 22, addressed to the Secretary of Defense, concerning the alleged black marketing by U.S. military personnel in Turkey and alleged mistreatment of certain U.S. military personnel by the Turkish authorities. Unfortunately, first your absence from Washington and later the fact that you were engaged with the NATO Parliamentary Conference prevented me from doing so.

Under the circumstances I have asked the General Counsel, Department of Defense, to assume responsibility for furnishing you the information which you requested. As I am sure you will appreciate, the Department has had numerous inquiries on this subject and the General Counsel already has responded to several Senators and Representatives who have asked similar questions.

Sincerely,

C. J. HAUCK, Jr.,
Deputy Assistant to the Secretary.

DECEMBER 9, 1959.

Hon. THOMAS S. GATES, Jr.,
Secretary of Defense, Washington, D.C.

DEAR MR. SECRETARY: On October 22, 1959, I wrote to Secretary McElroy asking for a detailed report on alleged black-market activities by U.S. military personnel in Turkey. I asked that the Department's report include answers to four specific questions. I asked that pending a receipt of the Department's report, I be furnished a copy of a report on the situation which was prepared by Major General Carroll.

I have now received a letter dated November 23, 1959, from a Mr. C. J. Hauck, Jr., of the Department of Defense. Mr. Hauck states that he has been hoping to talk to me personally about my letter of October 22. He further states that the Department of Defense has

already responded to several Senators and Representatives who have asked questions similar to mine.

I renew my request of October 22 and ask for prompt action.

Very truly yours,

J. W. FULBRIGHT, *Chairman.*

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., December 17, 1959.

Senator J. W. FULBRIGHT,
Chairman, Senate Foreign Relations Committee,
U.S. Senate.

DEAR SENATOR FULBRIGHT: Reference is made to your letters of October 22 and December 9, 1959, to the Secretary of Defense requesting a report on the current situation in Turkey with respect to the allegations that certain U.S. servicemen have been mistreated by Turkish authorities and that military personnel are involved in black-market activities. These letters have been referred to me for response. I regret the delay in responding to your original letter.

The questions of mistreatment of the American servicemen and of the charges against these servicemen concerning specified black-market activities are now before the Turkish courts. Accordingly, we do not think it appropriate to comment publicly on these matters at this time. The following background of the incidents can, however, be set forth.

On August 4 and 5, 1959, four U.S. servicemen were arrested by Turkish authorities and charged with currency control law violations arising out of alleged illegal exchanges of United States and Turkish currency. Since the alleged offenses are against Turkish law and unrelated to the official duty of the servicemen, the Turkish authorities have the primary right to exercise jurisdiction under the NATO Status of Forces Agreement. The Turkish authorities were unwilling to waive this right, and the trial of these servicemen is currently in progress. Local counsel representing the servicemen have been retained at the expense of the U.S. Government. An official U.S. trial observer is attending all of the sessions of the trial to assure that the proceedings against these servicemen are fair.

Two of the servicemen being tried have charged that shortly after their arrest they were subjected to brutal physical mistreatment by the Turkish authorities. As a result of the allegations of mistreatment, and in part of the instance of the two American servicemen, several Turkish policemen are now on trial before another Turkish court on charges arising out of these complaints. Although the two American servicemen involved are participating in this latter trial as complaining witnesses only, counsel for them in this case also is being provided at the expense of the U.S. Government. The possibility that such mistreatment occurred is a matter of great concern to us, and our authorities in Turkey are closely following this trial, as well as the criminal action against the servicemen.

In connection with the incidents in Izmir there has also been widespread publicity regarding the relief from command of certain American officers in Turkey. These officers were relieved for failure to exercise their command responsibilities in a satisfactory manner; more

specifically, for inadequate supervision within their organizations of established procedures for authorized money transactions. Their relief was not related to the allegations of mistreatment of the American servicemen. Contrary to various press reports, these officers were not immediately removed from Turkey but remained there as long as their presence was required for the pending litigation.

You may be assured that our authorities in Turkey are taking every proper action to see that the rights of our servicemen are fully protected. In addition to such measures as the provision of local counsel for our personnel and coverage of the trials by trained trial observers, a thorough investigation of the situation was undertaken by General Carroll at the direction of General Norstad independent of that conducted by the Turkish authorities. Although, as indicated above, we do not believe it would be appropriate for us at this time to discuss the merits of the issues before the Turkish courts, I can state that we have no reason to believe other than that the trials are being conducted fairly and that justice will be done.

With respect to the overall situation and your specific questions, I can only make preliminary comments at this time:

1. While we have reason to believe that some U.S. personnel in Turkey did engage in black-market activities, I am not in a position to make definitive estimates at present of the number of personnel involved or of the scale of their operations.

2. Generally, we believe U.S. relations with Turkey have not been adversely affected to any significant degree by the current trials.

3. While overall operations in Turkey under the NATO Status of Forces Agreement seem to be satisfactory, we continue to experience certain difficult problems in this area. Despite repeated efforts, the Turks have not yet developed machinery by which they can waive their primary right to exercise jurisdiction. Also, we continue to be concerned about the length of Turkish trial proceedings. We are attempting to achieve satisfactory resolutions to these problems.

4. The pay and allowance problem in Turkey is currently under study, but I believe it is too early to determine whether legislation is needed.

In the interest of obtaining as full and complete a report as possible on the questions you raise, I am requesting General Norstad to furnish us his views. Also, I am asking for the views of the Department of State and suggesting that they may wish to consult our Ambassador in Turkey. A full State-Defense report will be furnished you when these evaluations have been received.

In the interim we would be very glad to brief you or any member of your staff you designate on the details of the situation which cannot be publicly disclosed. With respect to General Carroll's report to General Norstad, only a few copies were furnished to the Pentagon and these are in use pending completion of the corrective action called for. Parenthetically, I might note that the copy this office had was borrowed by one of the military departments for appropriate staffing. In the circumstances, and in view of the trials now in progress, it has not been deemed possible to distribute the report to any Members of the Congress. However, as part of any briefing, we will be glad to discuss the contents of the report on a frank and informal basis.

Sincerely yours,

J. VINCENT BURKE, Jr.

DECEMBER 22, 1959.

Hon. THOMAS S. GATES, Jr.,
Secretary of Defense,
Washington, D.C.

DEAR MR. SECRETARY: Considering that I asked on October 22, 1959, for a report on certain activities of military personnel in Turkey, I find the reply of the General Counsel of the Department of Defense dated December 16, 1959, most unsatisfactory.

I note that the Department of Defense intends to furnish a full and complete report to me later. Meanwhile, I hope that the aim of those preparing such a report will be to make it as comprehensive as possible rather than, as was apparently the aim of the December 16 report, as restricted as possible. The questions which I asked in my letter of October 22 were illustrative and should be taken as mere starting point for a searching exploration of the issues. If any information requires security classification, it may be placed in a separate report.

Meanwhile, I request prompt answers to the following questions:

1. Why was there a delay of 2 months in responding to my letter of October 22?
2. Why was there a delay in asking for the views of General Norstad?
3. Why was there a delay in asking for the views of the Department of State?
4. When will the Department be in a position to make "definitive estimates" of the number of personnel involved or the amount of illegal profit, if any?
5. When will partial or tentative estimates be available of the numbers of personnel involved and the amount of illegal profit, if any?
6. In what ways is the executive branch attempting to achieve a resolution of the problems mentioned in numbered comment 3 in the General Counsel's letter of December 16. What is the explanation for the delay by Turkish authorities?
7. What are the factors delaying determination of the need for changes in legislation?

I also request answers to the last two questions stated in numbered paragraph 1 of my letter of October 22.

I regard the General Counsel's excuses for not, during the past 2 months, furnishing me a copy of General Carroll's report; namely, that the Pentagon lacked sufficient copies, as unworthy of the Department of Defense. Obviously, the Pentagon has facilities to make additional copies overnight. I therefore renew my request for this document.

Very truly yours,

J. W. FULBRIGHT, *Chairman.*

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C.

HON. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR SENATOR FULBRIGHT: In response to your request, I am enclosing a thermofax copy of pages 1-15 of General Carroll's report to General Norstad. These pages of his report summarize the facts contained in the two enclosures thereto. The succeeding pages of the report contain his conclusions and recommendations and are accordingly privileged. As Mr. Forman of this office informed Mr. Denney of the committee staff last week, the two enclosures to the report, which are quite bulky and which contain many documents not capable of being thermofaxed, are available in full for examination here at any time by Mr. Denney or by any other member of your staff who has been cleared for access to classified material.

My understanding of the circumstances of the delay in originally responding to your letter of October 22, 1959, is as follows: Shortly before receipt of your letter, similar requests for detailed information concerning the black-market activities of certain military personnel in Turkey were received from the Armed Services Committees of the Senate and House by the assistant to the Secretary of Defense for Legislative Affairs. Arrangements were made to satisfy these other requests through detailed oral briefings. In the light of the arrangements made with these two committees, it was thought that similar briefings would meet your needs. Accordingly, General Hauck, who was then deputy assistant to the Secretary of Defense for Legislative Affairs, made efforts to talk to you personally in response to your letter. As General Hauck explained in his letter to you November 23, 1959, he was unfortunately unable to do so, initially because of your absence from Washington and later because of your activities with the NATO parliamentary conference. At the end of November, General Hauck left the Pentagon on terminal leave pending his retirement, and the matter was referred to me.

Finally, I should like to clarify a statement contained in my letter of December 16, 1959, concerning the referral to General Norstad and the Department of State of the questions you asked. It appears that that statement carried an unintended implication and has been read as meaning that the Department of Defense had not previously obtained the views of General Norstad and of the Department of State on the situation in Turkey, and, indeed, had not even asked for their views prior to the middle of December. In fact, General Norstad's views were made known to the ranking officials of the Department of Defense and the Department of State early in October by General Carroll who personally briefed these officials on the contents of his report and the actions which General Norstad proposed to take. The situation was later personally discussed with General Norstad by Sec-

retary Gates, and, more recently, was the subject of discussions in November in Paris between General Norstad and myself. In addition, the appropriate officials of the Department of Defense and the Department of State were in close frequent contact as the situation developed, and the Department of Defense has been kept fully apprised of the views of the Department of State. My purpose in requesting General Norstad and the Department of State to comment on the particular questions raised by your letter was merely to afford General Norstad and the Department of State an opportunity to indicate whether there were any specific observations they wished to have included in our response to your questions.

The remaining problems raised by your letters involve classified information and are therefore discussed in a separate response.

The delay in responding to your original letter of October 22 is regretted, and it is hoped that you were not too severely inconvenienced by it.

Sincerely yours,

J. VINCENT BURKE, Jr.

FEBRUARY 1, 1960.

HON. THOMAS S. GATES, Jr.
Secretary of Defense,
Washington, D.C.

DEAR MR. SECRETARY: The response of the Department of Defense to my letters of October 22 and December 22, 1959, requesting information on black-market activities of U.S. military personnel in Turkey is profoundly disturbing to me.

First, I am shocked at the magnitude of such black-market operations, the level of the officers involved, and the implications which these facts suggest with respect to the personal values and patriotism of those involved.

Second, I suspect that Turkey is not a unique case.

Third, the Department of Defense attitude, thus far expressed to me, on the furnishing of information in response to my request on this subject is unsatisfactory.

I am not sure whether the reference to executive privilege in the Department's letter of January 13, 1960, is a refusal to supply the information requested or not. I renew my request for the full text of General Carroll's report, including the enclosures.

I refer to my request of December 22 stating that matters requiring security classification should be kept separate. Please indicate which portions of the Department's letter of January 19 and of General Carroll's report must be classified and state the reason in each case for such classification.

In my letter of October 22, 1959, I asked for an estimate of the number of personnel who might be involved and some estimate of the amount of illegal profit. I do not need an accurate estimate, which the Department states is not possible, but I would like an estimate.

What action has the Department of Defense taken with respect to the 58 military personnel interviewed by General Carroll who either admitted acquiring Turkish lira illegally or who declined to answer questions?

Very truly yours,

J. W. FULBRIGHT, Chairman.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., March 7, 1960.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR SENATOR FULBRIGHT: I enjoyed very much meeting and talking with you last Thursday. As I told you, we have made available to you or your staff for examination the entire report of General Carroll on the illegal currency transactions in Turkey and had previously furnished to your staff a copy of General Carroll's summary. From this copy has been removed the conclusions and recommendations of General Carroll.

The position of the executive branch with respect to this type of advice from subordinate to superior has been stated by the President as recently as December 15, 1959, in a letter to the Comptroller General of the United States, as follows: "The disclosure of conversations, communications, or documents embodying or concerning such opinions and advice can accordingly tend to impair or inhibit essential reporting and decisionmaking processes, and such disclosure has therefore been forbidden in the past, as contrary to the national interest, where that was deemed necessary for the protection of orderly and effective operation of the executive branch."

In regard to the security classification, the entire report of General Carroll is classified. As I explained to you, the purpose of such classification is not to keep any of the facts from you or any other Member of Congress. The basis for classification is twofold: First, the four servicemen involved are presently being tried by the Turkish courts, and the information disclosed in the Carroll report would seriously prejudice their trial; second, publication of the report could have a deleterious effect on our relations with the Government of Turkey and its people.

I have initiated steps to ascertain the action that has been taken against the military personnel who admitted acquiring Turkish lira illegally. As I explained to you, there is nothing of a punitive disciplinary nature that can be done to those persons who refused to answer questions, and there is not sufficient evidence upon which to base charges before a court-martial.

I am assured that every possible precaution has been taken to assure that such a situation will not arise again, but there is always a possibility that it will in those countries where the local official rate of exchange and the world market is unreasonably disparate.

I again want to assure you that I will be pleased to answer any further questions that you might have in this matter.

Sincerely,

J. VINCENT BURKE, Jr.

MARCH 15, 1960.

Hon. THOMAS S. GATES, Jr.,
Secretary of Defense,
Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: The more I learn about black market activities of U.S. military personnel in Turkey the more I am convinced that an important foreign relations problem is involved. My con-

cern has not been allayed by discussion on March 3 with Mr. Burke, your General Counsel, and with General Norstad on March 10 at an informal gathering with the committee. I wonder now how many countries there are, relations with which are being poisoned through currency manipulations and improper disposal of personal property by U.S. personnel there.

You will be coming before the committee soon to discuss the mutual security program. I expect to ask some questions on this subject then. Before that time I should like to have certain additional information.

I should like to have a list of the countries in which you think improper disposal of personal property or black market currency activities by military personnel have been of substantial proportions.

I should like for these countries copies of your regulations applicable to these subjects and specification of actions which have been taken to prevent damage to foreign relations.

I gather from General Norstad that no disciplinary action was taken—other than to relieve from command and transfer elsewhere—against persons subject to General Carroll's investigation who either admitted obtaining currency illegally or who declined to answer questions. I can well understand why this would annoy the Turks. Three reasons for the failure to take disciplinary action have been advanced. (1) Because some could not be tried (owing to lack of evidence due to the taking of the fifth amendment) it would not be fair to try others who admitted guilt. (2) It would be contrary to tradition to try enlisted men for offenses of which officers were suspected but not tried. (3) There were so many people involved in Turkey that it would not be possible to try everybody.

I should like to pursue this aspect of the matter further. Mr. Burke in his letter to me of March 7, 1960, said, "As I explained to you, there is nothing of a punitive disciplinary nature that can be done to those persons who refused to answer questions, and there is not sufficient evidence upon which to base charges before a court-martial." Who decided that there was not sufficient evidence? Was General Carroll's investigation the only one undertaken in Turkey? What attempts were made to get additional evidence from Turkish authorities? What use was made of the authority of commanding officers to inflict nonjudicial punishment (10 U.S.C. 815)? For what actions specified in subchapter X of the Uniform Code of Military Justice would persons suspected of black market currency operations be chargeable? Why was no court of inquiry to investigate General Carroll's findings convened (10 U.S.C. 935)? Was any attempt made to establish liaison between the Department of Defense, the Department of Justice, and the Internal Revenue Service concerning possible income tax violations?

Mr. Burke said in his March letter that " * * * every possible precaution has been taken to assure that such a situation will not arise again * * *." What precautions have been taken in Turkey? What changes in command channels have been made? What changes in regulations, inspection practices, and in enforcement machinery have been made?

The Department of Defense has not yet complied with several of my requests. I must reject Mr. Burke's explanation for his refusal to furnish the full text of General Carroll's report with its annexes. He cited executive privilege. If there is such a privilege it is personal to the President. It is not satisfactory to be told in Mr. Burke's March 7 letter that the conclusions and recommendations of General Carroll's report fall in the same category as some other paper which the President last year refused to submit to the Comptroller General.

I believe that an important principle of executive-legislative relations is present. The question of classification is not involved. The committee will not make General Carroll's report public. I therefore expect you to bring with you to the mutual security hearing the full text of General Carroll's report and its annexes or a letter from the President justifying withholding the report.

I also await some estimate, however rough, of the amount of illegal profits made on black market activities by U.S. military personnel in Turkey. I likewise await the full "State-Defense report" on the Turkish situation which Mr. Burke mentioned in his letter of December 16, 1959.

Very truly yours,

J. W. FULBRIGHT, *Chairman.*

(Following is the correspondence between Senator Mansfield, chairman of the Foreign Relations Subcommittee on State Department Organization and Public Affairs, President Eisenhower, and officials of the International Cooperation Administration, relating to an ICA evaluation report on Vietnam.)

SEPTEMBER 30, 1959.

MR. LEONARD J. SACCIO,
*Acting Director, International Cooperation Administration,
Washington, D.C.*

DEAR MR. SACCIO: You are, of course, familiar with the so-called Robertson amendment to this year's mutual security appropriation act, which seeks to enable the Congress to gain access to any and all information that is relevant to our aid programs. In view of this action by the Congress, I herewith renew my request to be given an opportunity to examine your agency's evaluation report of the program in Vietnam.

Thank you for your attention to this request.

Sincerely yours,

MIKE MANSFIELD.

INTERNATIONAL COOPERATION ADMINISTRATION,
OFFICE OF THE DIRECTOR,
Washington, D.C., October 16, 1959.

HON. MIKE MANSFIELD,
*Committee on Foreign Relations,
U.S. Senate, Washington, D.C.*

DEAR SENATOR MANSFIELD: I wish to acknowledge receipt on October 8, 1959, of your letter dated September 30, 1959, in which you renewed your request to be given an opportunity to examine the evaluation report on this agency's program in Vietnam.

As you can understand, enactment of the Robertson amendment has necessitated a review of this agency's procedures in connection with submission of materials to the Congress and the General Accounting Office. This review is being undertaken at the present time.

I do, however, wish to assure you that a response to your request will be forthcoming within the prescribed 35-day period of the Robertson amendment.

Sincerely yours,

L. J. SACCIO, *Acting Director.*

THE WHITE HOUSE,
Washington, November 10, 1959.

HON. MICHAEL J. MANSFIELD,
Chairman, Subcommittee on State Department Organization and Public Affairs, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am advised that on October 8, 1959, there was delivered to the Office of the Director of the International Cooperation Administration your written request that you be furnished with that agency's evaluation report of the program in Vietnam.

As I have stated on other occasions, it is the established policy of the executive branch to provide the Congress and the public with the fullest possible information consistent with the national interest. This policy has guided, and will continue to guide, the executive branch in carrying out the mutual security program so that there may be a full understanding of the program and its vital importance to the national security.

At the same time, however, under the historic doctrine of the separation of powers between the three great branches of our Government, the executive has a recognized constitutional duty and power with respect to the disclosure of information, documents, and other material relating to its operations. The President has throughout our history, in compliance with his duty in this regard, withheld information when he found that the disclosure of what was sought would be incompatible with the national interest.

It is essential to effective administration that employees of the executive branch be in a position to be fully candid in advising with each other on official matters, and that the broadest range of individual opinions and advice be available in the formulation of decisions and policy. It is similarly essential that those who have the responsibility for making decisions be able to act with the knowledge that a decision or action will be judged on its merits and not on whether it happened to conform to or differ from the opinions or advice of subordinates. The disclosure of conversations, communications, or documents embodying or concerning such opinions and advice can accordingly tend to impair or inhibit essential reporting and decision-making processes, and such disclosure has therefore been forbidden in the past, as contrary to the national interest, where that was deemed necessary for the protection of orderly and effective operation of the executive branch.

The ICA evaluation report which you have requested, which I understand is the August 15, 1957, report entitled "Evaluation of Vietnam Program," is an internal executive branch communication comprising opinion and advice on official matters. It is one of a class of reports prepared by small teams of senior officers on the basis of extensive study in the field and in Washington. The purpose of each such report is to examine basic ICA program objectives and program content in a particular country from the standpoint of determining whether the ICA program in that country is effectively carrying out our foreign policy objectives. Such reports contain the candid personal opinions, suggestions, and recommendations of the officers who prepare them, and are prepared for submission directly to the Director of the ICA for his information and use. Reports such as the one which you requested have been an important factor in the decisionmaking process within the agency, and requests for their release have consistently been denied.

Since the disclosure of the report requested by you would not be compatible with the national interest, I have forbidden that it be furnished pursuant to such request and hereby so certify in accordance with section 111(d) of the Mutual Security Appropriation Act, 1960.

Although I have forbidden the furnishing of the evaluation report requested by you, I wish to make it clear that this has not been done for the purpose of preventing the disclosure of any facts shown by the report. Such facts will be made available to you as promptly as possible.

Sincerely,

DWIGHT D. EISENHOWER.

DECEMBER 17, 1959.

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: On November 10, 1959, you wrote to me explaining the reasons why you felt that disclosure of the ICA evaluation report on Vietnam, which I had requested, would not be consistent with the national interest. Your letter stated that you have forbidden that it be furnished and so certify in accordance with section 111(d) of the Mutual Security Appropriation Act, 1960.

Your letter also stated that although you have forbidden furnishing the evaluation report requested, this was not done to prevent the disclosure of any facts shown by the report and that "such facts will be made available to you as promptly as possible."

As of the present time these facts have not been made available. I hope very much that they can be received in the near future inasmuch as my subcommittee is now in the process of preparing its report on the aid program in Vietnam.

Sincerely yours,

MIKE MANSFIELD,
*Chairman, Subcommittee on State Department Organization
and Public Affairs.*

INTERNATIONAL COOPERATION ADMINISTRATION,
OFFICE OF THE DIRECTOR,
Washington, D.C., December 21, 1959.

Hon. MICHAEL J. MANSFIELD,
*Chairman, Subcommittee on State Department Organization and
Public Affairs, Committee on Foreign Relations, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: On November 10, 1959, the President advised you that the facts shown by this agency's evaluation report of its program in Vietnam would be made available to you as promptly as possible.

The document transmitted with this letter contains these facts. Upon reading the document, which bears the same classification as the evaluation report, you will appreciate that much of the material therein is sensitive. The facts and accompanying background material are shown as they appear in the body of the evaluation report which is dated August 15, 1957. We have made no editorial changes which might tend, however slightly, to change the import of the facts as presented in the original. All deletions from the original report, except internal cross-references and similar nonsubstantive matter, are indicated by asterisks.

I would point out that ICA does not necessarily regard the facts as stated in this or any other evaluation report as beyond question or disproof.

With every good wish,
Sincerely yours,

JAMES W. RIDDLEBERGER.

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
August 25, 1960.

Hon. THOMAS C. HENNINGS, Jr.,
U.S. Senate, Washington, D.C.

DEAR SENATOR: In response to a telephone inquiry from the staff of your committee asking if further instances of information being withheld by the executive department have come to my attention, I enclose a copy of the committee's report on the U-2 incident.

You will note on page 7 that certain material was withheld from the committee.

Very truly yours,

J. W. FULBRIGHT, *Chairman.*

(Excerpts from the enclosed report follow:)

"EVENTS RELATING TO THE SUMMIT CONFERENCE" (S. REPT. 1761, 86TH CONG., 2D SESS.: REPORT OF THE COMMITTEE ON FOREIGN RELATIONS, U.S. SENATE (EXCERPT: PP. 6, 7, 22))

"It appears from the record that, although the summit conference was very much in Secretary Herter's mind when he approved the program including the May 1 flight, no specific decision was made not to discontinue the flights prior to the conference. In his address to the Nation President Eisenhower said, 'The decision was that the

program should not be halted' (p. 250). At one point, Secretary Herter told the committee, 'The decision not to suspend this program of flights, as the summit meeting approached, was a sound decision,' (p. 7). Later, however, he said that the question of a moratorium had never been discussed with anyone in the State Department, to his knowledge (p. 25). And he agreed, 'that is right,' that no positive decision was taken not to suspend the flights (p. 58). Secretary Gates likewise testified that in his conversation approving the program, nothing was said about a moratorium (p. 125). Secretary Herter also testified that so far as he knew, no actual decision to proceed with the flight or not to proceed with it was made (p. 93).

"The record is considerably less clear on the question of whether the flights were ever suspended for reasons other than the weather or technical considerations. Secretary Gates testified he had 'no knowledge' of any such suspensions (p. 125). Secretary Herter said that so far as he knew, the question of a moratorium during the Camp David talks in September 1959 never arose and there was no moratorium (pp. 58-59). On the other hand, the unpublished portions of the record, which cannot be cited here in detail, indicate that the flights were in fact suspended on occasion. On this point, however, the record is at best highly ambiguous.

"In any event, it appears that there was something very special about the May 1 flight, though the committee has been unable to determine exactly what. Both the President and the Secretary of State have said that the flight was mounted to secure very important information which might not be available later. Both the Secretary of State and the Director of the CIA declined, for reasons of security, to tell the committee what this information was.

VII. CONCLUSIONS

"Let it be said at the outset that the gathering of intelligence with respect to foreign activities potentially inimical to our security and that of the free world is fully justified by precedent as well as by vital necessity. Since time immemorial, nations have found it necessary to engage in such activities of both the overt and covert variety. The Soviet Union itself has probably engaged in covert intelligence activities on a wider scale than any other nation in the history of the world. What the committee is concerned with respecting the U-2 program is not the propriety, desirability, or necessity of such operations, but the lessons, if any, which can be drawn from the failure of the May 1 flight and related events.

"On the basis of classified testimony which cannot be discussed, the committee has no reason to believe that technical preparations for the flight were faulty or that the pilot was unreliable in any respect. From the technical point of view—that is, the preparation and equipment of plane and pilot—what befell the U-2 on May 1 was just plain bad luck.

"There remains the question of the wisdom of sending the flight at all. The committee was told that the flight was after information of well above average importance, but it was not told what this information was. The committee cannot, therefore, come to any conclusion as to whether the importance of the information sought justified the risks

which were taken. Although the committee recognizes the necessity for secrecy in intelligence operations, it is strongly of the opinion that a government based upon a separation of powers cannot exist on faith alone. It is disappointed that the responsible officials of the executive branch did not see fit to confide in it this one piece of information which is crucial to reaching an informed judgment. The committee recognizes that the administration has the legal right to refuse the information under the doctrine of executive privilege."

SENATOR BARRY GOLDWATER

MAY 11, 1960.

DEAR TOM: In my experience as a Senator, I cannot recall having been refused information by any of the departments of the executive branch, but I must say I have been disappointed at times by the lack of completeness of some of the information. I have always been at a loss to understand, with the vast sums we spend on statistics, why I am unable to find quickly statistics from the various departments. I don't think this is important to your purpose, but I merely mentioned it to acknowledge your letter.

Sincerely,

BARRY GOLDWATER.

SENATOR ERNEST GRUENING

MAY 31, 1960.

DEAR TOM: Thank you for your letter advising me of your interest in any instances which have come to my attention in which agencies of the executive branch of the Government have withheld information which should have been made available to the public.

There is one example of the restriction of information by the Department of Interior which came to light in the course of hearings I held on the bill, S. 1670, which I introduced for the purpose of establishing rights of certain Alaska homesteaders to subsurface minerals. I would like to bring this to your attention, as I believe it is a matter worth further investigation by the Subcommittee on Constitutional Rights.

As I imagine you know, homestead settlement laws provide that when a final patent is awarded for a homestead on land found valuable for minerals, such patent will issue with a reservation of mineral rights in the land to the Federal Government. In the case of the homesteaders for whose benefit I introduced S. 1670, there was no indication prior to their entry upon their homesteads that the land on which they settled had any mineral value. At the time oil was discovered on the Kenai Peninsula of Alaska in July 1957, these homesteaders had invested large amounts of capital and labor in the development of their homesteads. They had no reason to believe they would receive other than title in fee to their land until, after the oil discoveries, some of them received notices from the Department of Interior that they would be required to waive mineral rights in their land in order to obtain patents from the Government. The significance of this loss of subsurface rights to the homesteaders lies primarily in the fact that the allowance of mineral leasing on their land, with consequent

exploration and possible drilling for oil, constitutes serious jeopardy to their agricultural pursuits. Thus, the homesteader who must give up rights to the minerals on his land also is compelled to make the surface of his land available to the uses of mineral lessees who may prospect there. This could result in, at a minimum, extensive damage to crops and improvements on the land, and, in some cases, the effective loss of the entire investment of the homesteader.

With reference to the action of the Department of Interior which would be of interest to the Constitutional Rights Subcommittee, it came to my attention that the order of the Geological Survey which classified the Kenai homestead land as valuable for oil and gas was a document approved in April 1959, marked "Not for Public Inspection," and never published in any form until December 1959 when I made copies of it available to the people most concerned—the Kenai homesteaders.

I am enclosing a copy of part 2 of the hearings on S. 1670 in which is reprinted (beginning at p. 248) the correspondence which resulted in eventual publication of the memorandum to the Director of the Geological Survey from the Chief, Conservation Division, which established the Kenai area as valuable for oil and gas and which was marked "Not for Public Inspection." You will also find correspondence following this order in which I raised with the Director of the Geological Survey the issue as to why the memorandum to the Director had been marked "Not for Public Inspection." Despite the responses of the Interior Department to my inquiries, and the advice of the Department that the texts of the documents involved were belatedly available for publication, I still feel that no satisfactory explanation was obtained as to why this important publication remained available only in the files of the Geological Survey from April 22, 1957, until December 1959.

In commenting on the significance of this incident, it may be useful to supply a little detail concerning the procedures of the Bureau of Land Management in connection with the determination of rights of homesteaders to subsurface rights in their property. When homesteaders are confronted with a requirement that they waive mineral rights in their land in order to obtain a patent, the Department of the Interior offers them a choice of (1) waiving their rights and obtaining a limited patent, or (2) petitioning for reclassification of the lands as nonmineral in character, in which case the burden is on the homesteader to prove the land is nonmineral, or (3) appealing the action of the Bureau of Land Management. In view of the fact that the homesteaders had no notice of the mineral classification of their land and no information whatever on which to base a petition for reclassification of their land or an appeal of a decision by the Bureau of Land Management, it seems to me that a question arises of deprivation of property without due process of law. In my view there is no justification whatever for retention by the Department of the Interior in a status marked "Not for Public Inspection" of the most essential information required by homesteaders in order to protect their rights.

In the event I can supply you with any further information concerning this matter, please let me know. Meanwhile, I shall be grateful for the interest of the Subcommittee on Constitutional Rights in this matter.

In the event you are not familiar with action on this matter of the Special Government Information Subcommittee of the Committee on Government Operations of the House of Representatives, I am enclosing copies of an exchange of correspondence with the subcommittee chairman, Representative John E. Moss, pursuant to my having called this to his attention.

With best wishes, I remain,
Cordially yours,

ERNEST GRUENING.

Enclosures.

(The following letters appear as exhibits in the attached hearings on S. 1670 before the Subcommittee on Public Lands of the Senate Committee on Interior and Insular Affairs, 86th Cong., 1st sess. (pp. 253-256).)

LETTER FROM SENATOR GRUENING TO DR. NOLAN, DIRECTOR,
GEOLOGICAL SURVEY

U.S. SENATE,

Washington, D.C., November 18, 1959.

Dr. THOMAS B. NOLAN,
*Director, Geological Survey, Department of the Interior,
Washington, D.C.*

DEAR DR. NOLAN: On October 28 and November 1 of this year, pursuant to authority vested in me by the chairman of the Senate Committee on Interior and Insular Affairs and by the chairman of that committee's Subcommittee on Public Lands, I conducted public hearings of that subcommittee in Anchorage and Kenai, Alaska, on S. 1670, a bill to provide for the granting of mineral rights in certain homestead lands in the State of Alaska.

In anticipation of those hearings, and at my direction, my administrative assistant, Mr. George Sundborg, wrote you on October 9 and again on October 19 requesting the following materials for use at those hearings:

"1. Minutes of the Oil Board of November 8, 1956, concerning 'Criteria for Classification of Oil and Gas Lands';

"2. The memorandum of December 10, 1956, on 'Classification of Lands for Oil and Gas,' which was approved by the Director of the Geological Survey on April 22, 1957."

Although the materials thus requested had not been received by me in Anchorage at the time of the hearing there, I was informed by your Department's field solicitor that they were en route to my office in Washington. Accordingly, I ordered that the materials when received be placed in the public record of the hearing.

From the standpoint of the completeness of the record such action is important since competent geological testimony was presented at the hearing taking issue sharply with the classification made by the Geological Survey. It is therefore necessary that the classification made by the Geological Survey—and the bases for such classification—also appear in the record so that the committee have a valid basis for arriving at some conclusion as to the merits of the opposing contentions.

The information requested was delivered to my office in Washington on October 28, 1959—the day of the hearing in Anchorage—and was immediately sent on by my office to me in Anchorage.

In the light of this background, it was quite disconcerting, therefore, to find that the memorandum of December 10, 1956, entitled "Classification of Lands for Oil and Gas—Criteria," and bearing your signature of approval and the approval date of April 22, 1957, is marked "Not for Public Inspection." The accompanying minutes of the Oil Board dated November 8, 1956, do not bear a similar notation; however, since they are referred to in the memorandum of December 10, 1956, the question is raised as to whether the minutes also are subject to the same restriction as to public scrutiny.

I have seen advanced no cogent reason why a cloak of secrecy should be thrown over these documents. What is there to hide? The withholding of this information from the public seems wholly unwarranted.

The homesteaders who are asked to waive their oil and gas rights are informed that they may, as an alternative to signing such waivers, present evidence refuting the classification of their land as prospectively valuable for gas and oil. Such an alternative becomes meaningless unless there is made available to them the basis for the action taken by the Geological Survey. Refuting the contents of a document one is not permitted to see is not only an impossible task but, moreover, violates the basic principles of due process of law.

Accordingly, I would appreciate your supplying me with the answers to the following questions at your earliest convenience:

(1) Under what rule or regulation was and is the information contained in these documents withheld from public scrutiny and labeled "Not for Public Inspection"?

(2) Under what statutory authority was and is the information contained in these documents withheld from public scrutiny and labeled "Not for Public Inspection"?

Cordially yours,

ERNEST GRUENING.

RESPONSE OF THE DEPARTMENT TO SENATOR GRUENING'S REQUEST
FOR SPECIFIC INFORMATION

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 16, 1959.

HON. ERNEST GRUENING,
U.S. Senate, Washington, D.C.

DEAR SENATOR GRUENING: We have your letter of November 18, addressed to the Director of the Geological Survey, regarding availability to the public of the information contained in a memorandum of December 10, 1956, addressed to the Director, and in the document accompanying the memorandum.

The memorandum constituted policy recommendations to the Director from one of his subordinates. Inasmuch as oil and gas classification made by the Director have been called into question by homestead entrymen in Alaska and elsewhere, we fully intended that the

documents should be made available to the public. It was so intended in releasing them to your office.

There is no reason why the copies of the documents sent you should not be made a part of the record of the hearings on S. 1670.

Sincerely yours,

ROYCE A. HARDY,
Assistant Secretary of the Interior.

FURTHER REQUEST OF SENATOR GRUENING FOR ANSWERS TO CERTAIN SPECIFIC QUESTIONS

U.S. SENATE,
Washington, D.C., December 30, 1959.

MR. ROYCE A. HARDY,
*Assistant Secretary of the Interior,
Department of the Interior, Washington, D.C.*

DEAR MR. HARDY: This will acknowledge receipt of your letter dated December 16, 1959, replying to my inquiry of November 18, 1959, regarding the decision purportedly made on April 22, 1957, by the Director, Geological Survey, with respect to "criteria for classification of oil and gas lands."

In my letter to the director I specifically asked:

(1) Under what rule or regulation was and is the information contained in these documents withheld from public scrutiny and labeled "Not for Public Inspection"?

(2) Under what statutory authority was and is the information contained in these documents withheld from public scrutiny and labeled "Not for Public Inspection"?

I would appreciate an early reply to these questions.

Cordially yours,

ERNEST GRUENING.

RESPONSE OF THE DEPARTMENT TO THE FOREGOING LETTER

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 16, 1960.

HON. ERNEST GRUENING,
U.S. Senate, Washington, D.C.

DEAR SENATOR GRUENING: We have your letter of December 30, 1959, in which you again ask for references to the specific rule, regulation, or statutory authority for labeling "Not for Public Inspection" a memorandum dated December 10, 1956, and approved by the Director of the Geological Survey on April 22, 1957.

No specific regulatory or statutory provision was invoked nor is there anything secret about that document or the minutes of the oil board which accompanied it. There was no specific reason to approve the document on that particular date and no intent to deprive anyone of the rights earned prior thereto or afterward.

These documents did not result from any decision by the Survey or the Department to deprive anyone of their rightful interests. In fact, initiation of the changes in classifying lands as prospectively valuable

for oil and gas was the outgrowth of extensive technical and scientific study of the geologic conditions in sedimentary basins believed to contain formations favorable for accumulation of oil and gas. It had become increasingly clear that the older concept of visual structural features as a basis of classification was no longer adequate. The change to a petroleum province concept was considered necessary to accord with changing conditions of oil and gas exploration and development. The petroleum province concept had been stressed by the American Association of Petroleum Geologists, made up of the outstanding geologists of the United States, as early as 1941 as the best method to outline the future oil and gas provinces if it were desired to obtain an overall picture of the undiscovered oil resources.

Its adaptation by the Geological Survey for classification of land areas required much study and research by members of the Survey. During this period the stamp "Not for Public Inspection" was placed on the memorandum primarily as an administrative assurance that the proposed policy recommendations would not be released prior to a determination that they were acceptable to the Director of the Geological Survey. As the recommendations were approved, the documents are available for public inspection, as we indicated in our letter of December 16 to you.

Sincerely yours,

ROYCE A. HARDY,
Assistant Secretary of the Interior.

HOUSE OF REPRESENTATIVES,
SPECIAL GOVERNMENT INFORMATION SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., April 8, 1960.

HON. ERNEST GRUENING,
Senate Office Building, Washington, D.C.

DEAR SENATOR GRUENING: The Department of the Interior finally has admitted its mistaken use of the "Not for Public Inspection" stamp on the document transmitted to you.

I have asked the Department what steps have been taken to prevent similar mistakes in the future. Enclosed is the latest correspondence.

Sincerely,

JOHN E. MOSS, *Chairman.*

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., April 8, 1960.

HON. FRED A. SEATON,
*Secretary of the Interior,
Department of the Interior,
Washington, D.C.*

DEAR MR. SECRETARY: A letter of April 7, 1960, from D. Otis Beasley, Administrative Assistant to the Secretary of the Interior, provides further information on the public availability of documents

pertaining to the classification of prospectively valuable oil and gas lands. The letter responds to the House Government Information Subcommittee's inquiry of February 26, 1960, about the departmental rule or regulation which permits the use of the restrictive term "Not for Public Inspection" on the documents in question.

Mr. Beasley states that "the Department had not authorized the use of the marking in question at the time it was affixed (1956) nor is such a marking authorized now."

I am pleased to learn that there was no departmental authorization for the use of the restrictive designation "Not for Public Inspection" on the 1956 document setting the criteria for classification of oil and gas lands. Since indiscriminate use of secrecy stamps on public documents should be avoided, I am glad that the Department does not now authorize use of the stamp "Not for Public Inspection."

I hope all departmental employees have been notified that the "Not for Public Inspection" stamp is not authorized so that it will not be again mistakenly used.

Please inform the House Government Information Subcommittee exactly what steps the Department has taken to inform its bureaus and constituent agencies of the prohibition against the use of the "Not for Public Inspection" stamp.

Sincerely,

JOHN E. MOSS, *Chairman.*

DEPARTMENT OF THE INTERIOR,
Washington, D.C., April 7, 1960.

Hon. JOHN E. MOSS,
*Chairman, Special Government Information Subcommittee of the
Committee on Government Operations, House of Representatives,
Washington, D.C.*

DEAR MR. MOSS: This letter responds to your further inquiry of February 26 concerning certain documents pertaining to the classification by the Geological Survey as prospectively valuable for oil and gas.

As we have stated, the documents are available to the public. So far as we can ascertain, the first inquiry in respect of the documents was made by members of Senator Gruening's staff in October of last year in connection with hearings on S. 1670. Thereafter, copies of the documents were furnished to the Senator's office and presumably have been included in the record of the hearing.

Insofar as section 161 of the Revised Statutes is concerned, we do not agree with your interpretation of the Department's answer to the questionnaire which you mention. However, you are quite correct in assuming that we are aware of the amendment recently made to that statutory provision. In turn, we assume that you are familiar with the statement made by the President when he approved the amendatory legislation.

The Department had not authorized the use of the marking in question at the time it was affixed (1956) nor is such a marketing author-

ized now. This does not mean however, that the memorandum should have been prematurely released. As Assistant Secretary Hardy stated in his letter to Senator Gruening, a copy of which was furnished your committee, the bureau used the designation as a means of assuring that proposed policy recommendations would not be released prior to official approval.

Sincerely yours,

D. OTIS BEASLEY,
Administrative Assistant, Secretary of the Interior.

SENATOR PHILIP A. HART

AUGUST 30, 1960.

DEAR SENATOR: In response to your survey concerning access to information within Government agencies, I can only report that in the short time I have been here I have not encountered any unwillingness on the part of such agencies to make information available.

With every good wish,

Sincerely,

PHILIP A. HART,
U.S. Senator.

SENATOR VANCE HARTKE

MAY 7, 1960.

DEAR TOM: I am sorry to learn of your hospitalization, and I hope you will be back with us soon. In the meantime, I will attempt to answer your letter of May 3.

The principal incident bearing on the problem of withholding information from Congress, and far more important the general public, has been the recent investigations of airline crashes by the Civil Aeronautics Board and the Federal Aviation Agency. Sometime during the second week of April, the CAB met with the Administrator of the Federal Aviation Agency to report on the preliminary findings of the crash of an airplane near Tell City, Ind. Following the third such conference, a letter of recommendation was given to the Federal Aviation Agency by the Civil Aeronautics Board, suggesting that all Electra airplanes, not structurally inspected, be grounded. I learned of this through a friend who had heard it unofficially from the Board.

The existence of these recommendations was not acknowledged officially or publicly by either agency for more than 2 weeks. Even then, acknowledgment was made only after representatives of these agencies had met in executive sessions with the Interstate and Foreign Commerce Committee and members of the committee had urgently suggested a statement by these agencies.

I hope that the subcommittee will continue its very worthwhile efforts to promote freedom of information.

Sincerely,

VANCE HARTKE.

SENATOR CARL HAYDEN

MAY 9, 1960.

DEAR TOM: I thank you for your letter of May 3, concerning the continued study by your subcommittee into the denial of information to the Congress by the executive departments and administrative agencies.

I must advise that I have had no serious difficulty in obtaining desired information from the executive departments and the administrative agencies.

With kindest personal regards, I am,

Yours very sincerely,

CARL HAYDEN.

SENATOR SPESSARD L. HOLLAND

MAY 10, 1960.

MY DEAR SENATOR: Thank you kindly for your letter of May 3. I have canvassed members of my staff and have searched my own memory regarding instances of withholding executive department information. We can recall no such instances during my Senate tenure.

With kind personal regards, I remain,

Yours faithfully,

SPESSARD L. HOLLAND.

SENATOR HUBERT H. HUMPHREY

JUNE 10, 1960.

DEAR SENATOR HENNINGS: In a recent letter you asked whether I would have, in my capacity as a Senator and as chairman of various committees and subcommittees, cases of the executive branch withholding information from Congress.

As chairman of the Senate Foreign Relations Subcommittee on Disarmament I did have a recent experience regarding the report of a committee, headed by Mr. Charles Coolidge of Boston, to review U.S. disarmament policy. I am attaching a statement regarding this experience which I had prepared for the Record.

You may recall that a year ago I submitted testimony to the Moss Information Subcommittee in the House regarding the Disarmament Subcommittee's efforts to declassify testimony presented to it in executive session. I am also enclosing a copy of that testimony which you may find of interest.

If occasions arise in the future with respect to the withholding of information by the executive branch, I shall communicate this fact to you and your Subcommittee on Constitutional Rights.

Sincerely,

HUBERT H. HUMPHREY.

EXPERIENCE OF THE SENATE SUBCOMMITTEE ON DISARMAMENT ON THE
DECLASSIFICATION OF GOVERNMENT DOCUMENTS AND TESTIMONY

Statement of Senator Hubert H. Humphrey, Chairman, to the Special
House Subcommittee on Government Information

Achieving a balance between informing the public and preventing the dissemination of information which would be injurious to the Nation's security is one of the great problems that confronts our Government at the present time. In this effort both the executive and legislative branches have a responsibility.

The Congress has been wise to establish special committees to study this problem and to take or recommend action when agencies of the executive branch appear to be restricting unduly the availability of information to the public. In addition to these special committees the other committees of the Congress must also be alert constantly to guard against the deliberate or inadvertent suppression of important data when national security is not involved.

The purpose of this testimony is to share with the Special Government Information Subcommittee of the House Committee on Government Operations the experience of the Senate Foreign Relations Subcommittee on Disarmament with the declassification of information by the executive branch. I am presenting this statement in response to a request from the distinguished chairman of the subcommittee, John E. Moss.

It is not my intention to suggest that the specific cases I cite be investigated further. Rather, it is to show that information is withheld for reasons that cannot be justified in the name of national security and to stress the need for vigilance on this matter by all congressional committees.

Over the past year the Subcommittee on Disarmament held a number of hearings, many of them in executive session. In all cases the executive session was held because the witness requested it. Usually, after such a session the transcript of the hearing was submitted to the executive agency or agencies involved for review. The executive agency then marked those parts of the testimony that, in its opinion, should remain classified. In order to determine whether this classification was justified, the subcommittee and its staff reviewed carefully the testimony after it was returned by the executive officials. When the reason for the classification was not self-evident, the executive officials were questioned about it. Frequently a reason other than security was given for restricting the information. When these erroneous reasons were pointed out, the executive officials often lifted the classification label.

The experience of the Subcommittee on Disarmament suggests that in a great many cases the executive branch censors testimony for insufficient reason. In order to correct this practice the committees of the Congress and their staffs ought to review carefully all testimony

which executive departments ask to have classified. The review should seek to determine the reasons for continued classification and whether they are valid. Such a procedure would redound to the benefit of the electorate by providing our citizens with an opportunity to become better informed. Members of Congress would also be in a much better position to perform their constitutional responsibilities.

The cases which follow illustrate the various points I wish to bring out.

(1) The Central Intelligence Agency, in reviewing testimony given by a noted scientist, had classified a passage of testimony. When questioned as to why, the CIA official indicated he did not agree with the conclusion of the scientist and incorrect information should not be given out. When challenged further on the point, the CIA representative agreed to let the scientist's conclusion stand.¹

(2) The Atomic Energy Commission at first classified portions of testimony given by one of its chiefs of divisions that there was no evidence the Soviet Union was developing, testing, or producing so-called clean nuclear weapons; that is, weapons with reduced radioactive fallout. The Commission was asked whether it was not in the interest of the United States to have this information brought out. The Commission reviewed the matter and decided that the information was of interest and agreed to leave in that portion of the testimony.²

(3) The Department of State had struck out of testimony questions by the chairman and answers by a witness regarding a study being made by the Government on U.S. oversea bases. When it was pointed out by the subcommittee that this information was contained in a news conference of the Secretary of State, the Department officials then said the testimony had been deleted because it seemed irrelevant. It was suggested that it was not the function of the Department in reviewing testimony for publication to rule on the relevancy of the discussion, particularly questions the chairman considered sufficiently relevant to raise in the first place. The Department then agreed to leave in the discussion on the oversea base problem.³

(4) The Department of the Army and the Department of Defense classified testimony relating to the results of Operation Sagebrush, simulated war maneuvers of the Armed Forces using tactical nuclear weapons. The Army refused to remove the classification even after it was pointed out that at the time of the maneuvers in October 1955 a reporter wrote extensive stories about them and that these news accounts could only have been written as a result of considerable background briefing on the part of military officers. Part of the reason why the Army wished to continue to classify the information, according to one officer, was that the results indicated the Army didn't know quite what it was doing in the maneuvers. Even if this were true, said the officer, the information should not be released.⁴

¹ Hearings of the Subcommittee on Disarmament, "Control and Reduction of Armaments," pt. 17, testimony of Dr. Hans Bethe, p. 1539, discussion of the number of earthquakes occurring each year in the U.S.S.R. and China equal to a given yield of nuclear explosive.

² Hearings of the Subcommittee on Disarmament, "Control and Reduction of Armaments," pt. 16, testimony of Brig. Gen. Alfred D. Starbird, p. 1394.

³ Hearings of the Subcommittee on Disarmament, "Disarmament and Foreign Policy," pt. 1, testimony of William C. Foster, pp. 73-74.

⁴ Hearings of the Subcommittee on Disarmament, "Disarmament and Foreign Policy," pt. 1, testimony of Gen. Maxwell D. Taylor, p. 140.

(5) The Department of the Army requested the elimination from the record to be published several portions of testimony submitted by Army Chief of Staff, Gen. Maxwell Taylor. When challenged on the classification, over 90 percent of what had been taken out was restored. Among the passages finally declassified were those containing general discussions of new nuclear weapons development and the tactical uses of these weapons. They also put back statements the general had made on the necessity of improving our nonatomic or conventional weapons capabilities if a nuclear weapons test ban should go into effect, general information on the fabrication of nuclear weapons, expressions of opinion regarding the reliability of agreements with the U.S.S.R., views on the psychological impact of a nuclear test suspension on people around the world, and the effects of nuclear fallout.⁵

(6) The Government continues to classify significant information dealing with seismology—the study of earthquakes and movements in the interior of the earth. This includes testimony given before the Disarmament Subcommittee and documents submitted to the subcommittee by executive agencies. The subcommittee has never received a satisfactory explanation as to why such studies should be kept secret.⁶

The reason that such studies should be made available is that advances in the science of seismology are needed and necessary to improve our knowledge about the detection and identification of underground nuclear explosions. It is to the interest of the United States to speed up our work in this field so that we may have a better conception of the capabilities of a control system for the cessation of nuclear weapons tests. An expanded research program in seismology is essential and a number of well-qualified and prominent seismologists and geophysicists have recommended specific projects; yet, the detailed description of these projects and the estimates given for the workability of certain theories for the detection and identification of nuclear weapons tests remain closed to the public and to scientists throughout the country. What is particularly of concern is that some of our scientists who have visited the Soviet Union within the past year report that in some fields in seismology the Soviet Union is much more advanced than the United States and that in many respects more money is being spent on fundamental research in seismology in the Soviet Union than is being spent in the United States.

This suggests to me that the Department of Defense should not be the primary agency responsible for developing programs in the field of seismology and related scientific fields. Perhaps if this work were lodged in the Coast and Geodetic Survey of the Department of Commerce or the National Academy of Sciences, the scientists of the country would have access to the results of studies made and experiments conducted.

⁵ Ibid., pp. 116, 117, 118, 119, 133, and 136.

⁶ Since preparing this statement I am pleased to report that some of this information has been released. Some material contained in the Berkner report on seismic improvement was released on June 12. There is the possibility that more of such information will be forthcoming.

The six cases discussed briefly illustrate that Government agencies mistakenly classify information and deny it to the public. These are not the only cases that could be cited, but I believe the ones I have submitted amply demonstrate the need for vigilance on the part of congressional committees to review carefully all transcripts which contain classified information. If this is done then perhaps executive agencies, too, will exhibit greater awareness of the public's need to know and will exercise greater care in the future in the classification of testimony.

I would not want to end this statement without emphasizing that in most cases overclassification of information is not a deliberate effort to deceive the people or to protect the Government from criticism. Generally I think it is due to a habit of being overcautious, in other words to follow the rule to classify when in doubt.

DISARMAMENT SUBCOMMITTEE EFFORTS TO OBTAIN COOLIDGE REPORT ON DISARMAMENT

Remarks of Senator Hubert H. Humphrey, Congressional Record,
June 2, 1960

Mr. President, many Members of the Senate will recall that in August 1959 the President announced that the executive branch was undertaking a full review of U.S. disarmament policy. A Boston lawyer, Mr. Charles Coolidge, was appointed to head a committee to conduct this review. The purpose was to enable the United States to be adequately and thoroughly prepared for forthcoming disarmament negotiations with the Soviet Union and eight other countries to be held in Geneva, beginning March 15, 1960.

Throughout the disarmament debate at the 1959 session of the United Nations General Assembly the United States did not put forth any concrete arms control proposals on the grounds that a review was being conducted. The work of Mr. Coolidge was given special emphasis. Our Ambassador to the United Nations, Mr. Henry Cabot Lodge, stated to the General Assembly: "As for the United States, President Eisenhower has recently set in motion a new and thorough review of disarmament in the light of present-day technology. This review will prepare us to participate fully and constructively in the deliberations scheduled for next year."

The report of the Coolidge group was awaited by many of us who have followed arms control problems and possibilities. I, myself, had the privilege of visiting once with Mr. Coolidge and hearing about his concept of his work.

Mr. Coolidge reported to the Secretary of State and the Secretary of Defense early in January 1960. The comprehensive review had been completed. Some stories began to appear in the press. They were disquieting. The Coolidge Committee had been unsuccessful. The report was not usable. It said little about disarmament. It said a lot about rearmament. Mr. Coolidge was reported to have visited the headquarters of the Strategic Air Command and conferred for

long hours with General Powers and his aides. Mr. Coolidge is said to have been shown highly classified war plans by SAC officers in an effort to convince him that substantial arms control was unthinkable at this time. These were the rumors that began to be circulated. Nobody knew what was the actual case.

On January 15, 1960, I, as chairman of the Disarmament Subcommittee, invited Mr. Coolidge to appear before the subcommittee and present testimony regarding his report. Mr. Coolidge had to decline and he indicated that perhaps it would not be appropriate for him to testify.

Subsequently, I wrote three letters to the Secretary of State asking for information pertaining to the Coolidge report. In the first letter, dated January 29, 1960, I asked whether the Coolidge report could be discussed with Members of Congress. The Secretary's response was that the Coolidge report was in the form of a working paper and was not being made public.

In my second letter, dated, March 10, 1960, I told the Secretary that I recognized not all reports to the Department should necessarily be made public. But I requested whether the Department could make the Coolidge report available to the subcommittee on an executive basis. In other words, the members would review its contents in executive session. The response of the Secretary to this request was also negative. He said in a letter of March 21, 1960, he did not "believe that it would be appropriate to make this particular study available as you suggest."

In his letter of March 21, the Secretary of State gave no reason for withholding the information contained in the Coolidge report. I, therefore, addressed a third letter to the Secretary. I pointed out that many times in the past the Disarmament Subcommittee and the Department of State had cooperated in sharing information. During the 1957 disarmament negotiations representatives of the Department of State, including Mr. Dulles himself, met weekly with the subcommittee to discuss in detail developments in the talks. Furthermore, the Department submitted daily to the subcommittee all telegrams and other reports dealing with the negotiations. (In this connection I might say that I know of no case when any of this information was revealed by anyone connected with the subcommittee to unauthorized persons). Since the Department had cooperated with the subcommittee in this instance, I asked in my third letter to the Secretary whether the policy of the Department of State had changed. And, if it had changed, I wanted to know on what ground and under what authority the information was being denied.

The Secretary of State, in his reply of April 23, 1960, stated that "This study was prepared solely for the advice and internal use of myself and the Secretary of Defense. It is essential to effective administration that employees of the executive branch be in a position to be fully candid in advising with each other on official matters, and that the broadest range of individual opinions and advice be available in the formulation of decisions and policy. The disclosure of such opinion and advice can tend to impair or prohibit essential reporting and decisionmaking processes, and such disclosure has therefore been withheld in the past as contrary to the national in-

terest, where such action was deemed necessary for the protection of orderly and effective operations of the executive branch."

Mr. President, I ask unanimous consent to have inserted into the Record at the close of my remarks the exchange of correspondence between the Secretary of State and myself on the subject of the Coolidge report.

I insert this correspondence not to make political capital and not even to try at this late date to flush out the recommendations of the Coolidge report. But I am inserting this material as a report to the Senate on one of the experiences of the subcommittee in trying to obtain information regarding disarmament policy.

There is also another reason for making a point of this experience.

The appointment of the Coolidge committee was given again and again as an excuse for not having a disarmament policy. As I mentioned earlier in my remarks, the U.S. delegation to the United Nations had nothing to offer in the way of a policy during the 1959 session of the General Assembly.

If the Department of State did not want to make public the recommendations of the Coolidge committee then the Department should not have made so much fuss over its appointment. The Department should not have claimed that the Coolidge committee was its reason for the lack of policy during the period August 1959 through February 1960.

I sympathize and am in agreement with the notion that the Department must be able to receive confidential advice. But the Department cannot have it both ways. It should not publicize the fact of the Coolidge committee and then turn around and pretend that it cannot share the contents of the committee's recommendations to a duly authorized subcommittee of the Senate on an executive basis.

But, Mr. President, the Department of State evidently was not successful in keeping the Coolidge report bottled up. Someone somewhere in the executive branch of the Government thought that the recommendations of the Coolidge committee should be made public. A leak to the press was conveniently arranged. An article appeared, and from all the information I can gather, it is fairly accurate. I ask, Mr. President, unanimous consent to insert into the record following the insert of correspondence the article by Mr. Richard Fryklund of the Washington Evening Star of April 22, 1960, entitled "Secret Report Opposes Signing Arms Pact Now."

The experience of the Department of State with the Coolidge committee points up an important need. That is the need to have a permanent group in the Government with competent and qualified staff to work full time on problems of arms control. The appointment of ad hoc committees, such as that headed by Mr. Coolidge, places an undue burden on private citizens, with little or no experience in arms control matters, to propose solutions to difficult problems within a period of a few months. Not only is this posing an unfair burden on the individuals involved, it is dangerous for the country. Arms control policies involve serious questions of national security. They should be given the most careful and thorough scrutiny. The need for a thoughtful and well-staffed effort to map arms control programs and policies remains unfulfilled and urgent.

(Following is the pertinent correspondence:)

JANUARY 29, 1960.

HON. CHRISTIAN A. HERTER,
Department of State,
Washington, D.C.

MY DEAR MR. SECRETARY: Recently the Subcommittee on Disarmament invited Mr. Charles Coolidge to testify before it in executive session regarding the results of his review of U.S. disarmament policy. Mr. Coolidge was unable to appear at the time suggested. In his letter to me he also raised the question of whether he would be able to testify at all. I believe it would be appropriate for me to raise this question with you. Can the Coolidge report be discussed with Members of Congress? If not, can you let us know why it is being withheld?

I do think it would be mutually helpful if the Department at an appropriate time could consult with members of the subcommittee regarding the development of U.S. disarmament policy. I believe that misunderstandings about the nature of our policy can be decreased through an increased consultation between the Department and the subcommittee on the development of the policy and the problems involved in it.

Any information you can give me with respect to the Coolidge matter will be appreciated.

Sincerely,

HUBERT H. HUMPHREY.

DEPARTMENT OF STATE,
Washington, February 17, 1960.

HON. HUBERT H. HUMPHREY,
Committee on Foreign Relations,
U.S. Senate.

DEAR HUBERT: In your letter of January 29, 1960, you inquired regarding the results of the review of U.S. disarmament policy by Mr. Charles Coolidge, and regarding possible consultation by the Department of State with the Subcommittee on Disarmament concerning the development of U.S. disarmament policy.

Mr. Coolidge's study was undertaken in order that he might advise the Secretary of Defense and myself concerning disarmament policy, and in order that we in turn might make recommendations to the President. It is a working paper to be taken into account along with other studies in the course of formulation of U.S. disarmament policy and is not being made public. Mr. Coolidge's conclusions and recommendations constitute advice given for the direct use of the Secretary of Defense and myself.

The Department of State has always considered that it would, as you point out, be mutually helpful to have consultation with members of the subcommittee in the course of development of disarmament policy. As you know, 10-power disarmament talks are scheduled to begin in Geneva on or about March 15, and in preparation for these talks our disarmament position is under review in consultation with our allies. While this review is in progress responsible Department officials would

be pleased at your convenience to meet with members of the Subcommittee on Disarmament in executive session to discuss the problems involved.

With warmest personal regards,
Most sincerely,

CHRISTIAN A. HERTER.

MARCH 10, 1960.

HON. CHRISTIAN A. HERTER,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: Thank you for your letter of February 17 regarding mine of January 29. I appreciate the willingness of Mr. Eaton, Mr. Farley, and other officers to meet with me and other members of the Disarmament Subcommittee to discuss current policy with respect to disarmament. These discussions have been most useful.

Your explanation of the purpose and nature of the Coolidge report I also found of interest. I can understand why it is not being made public. I would like to request the Department to make available the Coolidge report on an executive basis to the members of the subcommittee.

Sincerely,

HUBERT H. HUMPHREY.

DEPARTMENT OF STATE,
Washington, March 21, 1960.

HON. HUBERT H. HUMPHREY,
U.S. Senate.

DEAR HUBERT: Thank you for your letter of March 10 in which you state that your consultations with Mr. Eaton, Mr. Farley, and other officials were useful to you and the other members of the Disarmament Subcommittee. We also value highly the exchange of views which these discussions make possible.

With regard to your request that Mr. Coolidge's report to the Secretary of Defense and myself be made available on an executive basis to the members of the subcommittee, I refer to my letter of February 17 in which I stated that Mr. Coolidge's conclusions and recommendations constituted advice given for direct use by Mr. Gates and myself in our study of disarmament policy. This report was a working paper contributing to the formulation of the disarmament proposals which have now been put forward in Geneva, and I do not believe that it would be appropriate to make this particular study available as you suggest.

With warmest personal regards,
Most sincerely,

CHRISTIAN A. HERTER.

MARCH 30, 1960.

HON. CHRISTIAN A. HERTER,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: Thank you for your letter of March 21 regarding my request to examine the Coolidge report.

It was not clear from your letter on what ground the report is being denied to the Disarmament Subcommittee. In the past the Department of State has been most cooperative in sharing with members of the subcommittee on an executive basis a vast amount of material dealing with the problem of disarmament. During the 1957 disarmament negotiations in London, for example, Mr. Dulles arranged for all reports, cables, and other records to be made available for the examination of the subcommittee members. You may also recall that during the discussion of U.S. policy in the Middle East a few years ago the Department shipped an enormous quantity of material dealing with policy matter to the Foreign Relations Committee.

With respect to the sharing of the Coolidge report with members of the Disarmament Subcommittee, I would like to know whether the Department's position has changed. If it has changed and it is the intent of the Department not to reveal to the subcommittee the contents of the report may I know on what ground and under what authority the information is being denied.

I am sure that you appreciate my concern that these questions be clarified.

Sincerely,

HUBERT H. HUMPHREY.

DEPARTMENT OF STATE,
Washington, April 23, 1960.

Hon. HUBERT H. HUMPHREY,
U.S. Senate.

DEAR HUBERT: In your letter of March 30 you refer again to the Coolidge report, which has been the subject of previous communications between us, and also to the procedures established during the 1957 disarmament negotiations for keeping Disarmament Subcommittee members informed about the course of negotiations.

With regard to the current disarmament meetings, we already provide the subcommittee with the verbatim records and conference documents for both the 10-Nation Disarmament Conference and the nuclear test discussions. If you desire we would be pleased to discuss measures to expand this cooperation.

With regard to the Coolidge report, however, I must reiterate the position I took in my letters of February 17 and March 21. This study was prepared solely for the advice and internal use of myself and the Secretary of Defense. It is essential to effective administration that employees of the executive branch be in a position to be fully candid in advising with each other on official matters, and that the broadest range of individual opinions and advice be available in the formulation of decisions and policy. The disclosure of such opinion and advice can tend to impair or prohibit essential reporting and decisionmaking processes, and such disclosure has therefore been withheld in the past as contrary to the national interest, where such action was deemed necessary for the protection of orderly and effective operations of the executive branch.

With warmest personal regards,
Most sincerely,

CHRISTIAN A. HERTER.

SENATOR JACOB K. JAVITS

MAY 26, 1960.

DEAR TOM: Since receiving your letter of May 3 regarding the investigation of the Subcommittee on Constitutional Rights on withholding of information from the Congress, I have checked this personally and have had my staff check into this matter. To the best of my knowledge I do not know of any instances in which information has been withheld by executive departments and administrative agencies from committees or subcommittees of which I am the chairman or a member. Perhaps the chairman of subcommittees to which I belong may have additional information on such situations. However, none have come to my attention.

With warm regards,
Sincerely,

JACOB K. JAVITS, *U.S. Senator.*

SENATOR LYNDON B. JOHNSON

MAY 27, 1960.

DEAR TOM: I have received your recent letter concerning the follow-up of your 4-year study on the withholding of information from Congress by various executive departments and independent agencies. You asked for any information I might have in connection with my duties as chairman of the Aeronautical and Space Sciences Committee and of the Subcommittee on Preparedness of the Armed Services Committee, which would be of interest in connection with this study.

Most of the inquiries and requests for information made by these committees are directed to the National Aeronautical and Space Administration and to the Department of Defense. While some difficulty has been experienced in receiving prompt and complete information, such information is usually forthcoming.

The only case I can recall at this time where information was withheld, occurred last year during the hearings by the Subcommittee on Governmental Organization for Space Activities of the Space Committee. Questions were asked by the subcommittee of Dr. Keith Glennan, Administrator of NASA, in connection with the activities of the Space Council. Dr. Glennan declined to discuss these activities on the ground of executive privilege.

While not agreeing completely with Dr. Glennan, the committee did not press him after determining that this was the President's position, that the Space Council was advisory and should be considered confidential to the Chief Executive.

With kind personal regards, I am,
Sincerely,

LYNDON B. JOHNSON, *Chairman.*

SENATOR OLIN D. JOHNSTON

MAY 26, 1960.

DEAR SENATOR: Thank you for your recent letter concerning the withholding of information from the Congress by executive departments and agencies.

Our experience shows a definite reluctance on the part of Federal agencies to respond fully and completely to our requests for information on legislation, unless the administration favors the legislation involved. This reluctance is particularly apparent when cost estimates are needed.

For example, when a pay bill is under consideration, we find it extremely difficult to obtain from the Post Office Department an estimate of the cost of the measure. Yet when Department representatives testify on the bill in the presence of reporters, they readily produce figures to show how drastically the bill will add to the postal deficit.

This attitude on the part of the executive branch extends to all legislation with which we are concerned. When the administration favors the measures, assistance and supporting research are readily available. When the administration opposes the legislation, however, it is most difficult to obtain the data we need.

In matters not concerned with specific legislative measures, we have experienced a similar reticence. The Civil Service Commission, for example, has refused the committee information on examinations prior to providing this information to the agency concerned. We are told that Commission rules do not permit this disclosure until "proper authorities" are notified.

When Bernard Flanagan was being investigated, our initial review of his military file showed that it was complete. The file was returned to the Department of the Army, but when the committee requested it and received it a second time, we found that it had been censored. We were advised that the deleted information would not be provided us. No reason for withholding this part of his file was given.

In our investigation into the "numbers racket" in 1955, we encountered similar opposition from the Small Business Administration. This agency would furnish the committee only with a copy of the Form 57 of George McDavitt, Director of SBA's Compliance and Security Section. The remaining part of his file—which was important to our investigation—was refused the committee. We were told that the information it contained was for the use of the executive branch exclusively.

On innumerable occasions, when charges have been made against employees of the executive branch, agencies have refused to furnish this committee with details of charges. We have been told that this information is to be kept private as between the individual involved and the agency, and that there is no authority to release it to us.

Please do not hesitate to let me know if I can be of further assistance in this matter.

With kind regards, I am,
Sincerely yours,

OLIN D. JOHNSTON.

SENATOR B. EVERETT JORDAN

MAY 17, 1960.

DEAR SENATOR HENNINGS: In reply to your recent inquiry, I am glad to tell you that from my experience as a U.S. Senator, member of committees, and chairman of subcommittees, I know of no instance of information withheld by executive departments and administrative agencies.

With best regards.

Sincerely,

B. EVERETT JORDAN,
U.S. Senator.

SENATOR KENNETH B. KEATING

MAY 10, 1960.

DEAR TOM: This will acknowledge your recent letter requesting a statement from me as to any instance in my experience as a Member of Congress of the withholding of information by executive departments and administrative agencies. I cannot recall any such case off-hand in which I felt the executive department was withholding information unreasonably, but I shall give further thought to this matter and write to you again if any such instances occur to me.

With personal regards.

Very sincerely yours,

KENNETH B. KEATING.

SENATOR ROBERT S. KERR

MAY 10, 1960.

DEAR TOM: I have received your letter of the third in which you ask whether or not I, as chairman or member of a committee or subcommittee, can cite instances where information was withheld by executive departments and administrative agencies.

I do not recall any request for information which I have made to an executive department or administrative agency when the information requested has not been furnished.

With kindest personal regards, I am,

Sincerely yours,

ROB'T S. KERR.

SENATOR OREN E. LONG

JUNE 7, 1960.

DEAR MR. CHAIRMAN: In your letter of May 3, 1960, you inquired about any difficulties which I might have encountered in obtaining information from executive departments and agencies necessary for the pursuit of my legislative duties and responsibilities. I felt, therefore, that I should call your attention to a recent request by the Department of the Navy to change the informational provisions of a pending bill (S. 2839). The bill, which I introduced on January 28, 1960, would establish a 12 member commission to study problems of American Samoa. The Commission would include four Members of the Senate appointed by the President of the Senate, four Mem-

bers of the House appointed by the Speaker of the House, and four members appointed by the President.

Section 4(b) of the bill states: "The Commission is authorized to secure from any department, agency, or independent instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this Act; and each such department, agency, and instrumentality is authorized and directed to furnish such information to the Commission, upon request made by the Chairman or the Vice Chairman when acting as Chairman."

The Department of the Navy, in its report on the bill to Chairman James E. Murray of the Senate Committee on Interior and Insular Affairs, requested a revision of the information section. In a letter dated May 31, 1960, and signed by Rear Adm. John S. McCain, Jr., Chief of Legislative Affairs, U.S. Navy, Admiral McCain stated:

"The Department of the Navy, on behalf of the Department of Defense, interposes no objection to the enactment of S. 2839.

"It is recommended, however, that section 4(b) of the bill be revised to avoid a constitutional question concerning the authority of the executive branch to withhold information when its disclosure would not be in the public interest. The following language has been recommended by the Department of Justice for situations such as this:

"The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information it deems necessary to carry out its functions under this Act; and each such department, agency, and instrumentality is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information to the Commission, upon request made by the Chairman or by the Vice Chairman when acting as Chairman."

"This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense."

It appears to me that enactment of such a provision would do violence to the congressional right to know. Although the provision in this instance applies only to a proposed special commission, its enactment might be claimed as congressional sanction to the executive's claim of a virtually unlimited right to withhold information from the legislative branch.

It is my understanding that Congress is entitled to all information which it deems necessary from the executive branch unless there is clear legal authority for withholding. Under the provision requested by the Navy, Congress would be entitled to information only if the availability of that information was "permitted" by law. In other words, instead of reserving the authority to withhold information which is required by law to be withheld, it appears that the Navy is seeking to reserve the right to withhold any information unless the law positively requires its availability.

From the work of your subcommittee and that of the House Government Information Subcommittee, I believe it is obvious that this is a most important and fundamental distinction. The Navy's proposed language was recommended by the Department of Justice and therefore apparently represents administrative policy.

I hope this information will be helpful to your subcommittee and that it may serve to stave off another attempt by the executive branch to weaken the congressional right and need to know.

Sincerely yours,

OREN E. LONG, U.S. *Senator*.

SENATOR EUGENE J. MCCARTHY

AUGUST 26, 1960.

DEAR MR. CHAIRMAN: I would appreciate your including the enclosed remarks as my statement in your report on withholding of information by the executive branch. They are excerpts from my statement during the Strauss confirmation debate last year.

Thank you.

Sincerely yours,

EUGENE J. MCCARTHY.

EXCERPTS FROM THE CONGRESSIONAL RECORD, 86TH CONGRESS,
1ST SESSION, VOLUME 105, PART 8, PAGES 10654 AND 10655

It is vitally important that administrative officials also understand their relationship to the Congress; that they be aware of the changes which have taken place in our Government; that they be concerned to make government truly representative and responsible; that they show a willingness and determination to cooperate with the Congress, and, to the best of their ability and understanding, to carry out the intent of Congress in order that the purpose of representative government may be achieved in the fullest possible measure.

It is this new role of Cabinet officers which requires careful and, if necessary, prolonged inquiry on the part of Senators who must judge the qualifications of nominees of the President. The official actions of these officers of Departments such as Agriculture and Commerce have direct and significant effects upon the rights and welfare of citizens of the United States. In many cases the livelihood of citizens, their economic well-being, depends upon the exercise of the discretionary power of these officers in interpreting and applying the laws * * *.

Often the administration's decisions have involved questions of policy of either a legislative or judicial character.

The dual position of members of the Cabinet is well expressed and described by Prof. Richard Neustadt, now an associate professor of government at Columbia University and at one time on the White House staff during President Truman's administration. In the current issue of the Reporter, June 11, 1959, Mr. Neustadt reviews a new book, "The President's Cabinet," by Richard Fenno. In the review he observes:

"The Constitutional Convention is supposed to have established a government of separated powers. It did nothing of the sort. Rather, it created a government of separated institutions sharing powers. President and Congress were made independent of each other, and their separateness has been maintained from then to now by their reliance upon differing electorates. But by deliberate plan, both Capitol and White House were to share—and do share—the govern-

mental powers of the other. And chief among the powers shared has been control of the executive departments."

A few lines later, Mr. Neustadt states:

"The Constitution, on its face, gives Congress no less power than the President to supervise administration, and the power has been used as opportunity afforded. From 1789, when the first executive departments were created by act of the First Congress, authority to organize departments and to legislate what they should do, to furnish funds to do it, to investigate its doing, and to confirm appointees has made Congress a partner with the President—and sometimes the senior partner—in controlling his executive establishment.

"Department heads who sit in Cabinet with the President are compelled, constitutionally, to serve two masters; he is only one of them."

I have been a member of committees before which Secretary Anderson has testified. There was never any question that he was telling us what to do. He was answering the questions we put to him. So far as I know, he has never invoked the privilege of executive secrecy, and he has never spoken about this subject in the way which Admiral Strauss has spoken. As will be noted from a reading of the testimony, Mr. Strauss went so far as to say, in one instance when he was being pressed for information, that even though the Attorney General told him that he had no basis for executive privilege, he would himself reserve judgment as to whether information should be revealed to the committee.

Also, with regard to the Dixon-Yates contract, after the President had said, "This is an open book," Mr. Strauss evidently concluded that this statement did not apply to him. At least, he did not open the book * * *.

Congressmen and the President himself are tested for many months in political campaigns. Men holding these high administrative posts, whose decisions directly affect the welfare of citizens, must also be tested. It seems to me to be a proper construction of the Senate's advice and consent obligation to ask appointees to explain and to clarify their positions on policy and their concept of their office before they are approved; also, at this time of flux in Government relations, to explain their understanding of their relationships with and their obligations to the Congress itself.

If we review the conflicts and frustrations of the Congress with the administration in the past few years we find the origins, not in an irresponsible or aggressive Congress, but in an administration some of whose leaders generally lack a nicety of understanding of their responsibility to the policymaking power and decisions of Congress * * *.

SENATOR JOHN L. MCCLELLAN

JUNE 20, 1960.

DEAR SENATOR HENNINGS: Reference is made to your letter of May 3, 1960, concerning the study being conducted by the Senate Judiciary Subcommittee on Constitutional Rights on the withholding of information from the Congress by the executive departments and administrative agencies.

The question of withholding information from the Congress by the Bureau of the Budget which, as you probably know, has a policy of requiring clearance before any agency may submit reports to committees on pending legislation, has been raised before this committee on several occasions. In addition, the staff has found in many instances when contacts were made with agencies interested in legislation pending before the committee that, although the proposed reports had been submitted to the Bureau of the Budget weeks and sometimes months in advance, they had not been cleared. Under this procedure, the committee has been severely handicapped in obtaining information it considered to be necessary before acting on bills pending before it. Further details regarding different Bureau regulations are found on pages 26 and 27 of the hearings on the Passport Reorganization Act of 1959, as contained in a staff memorandum included in the committee hearings.

Also you will note on page 15 of the hearings on a bill relating to payments in lieu of taxes (S. 910), Senator Humphrey, acting for the chairman of the committee in connection with the hearings on this bill, made some critical comments relative to the lack of cooperation by the Bureau of the Budget in reaching decisions regarding pending legislation.

Also attached are several copies of Senate Document 108 on a closely related subject dealing with refusals to the General Accounting Office of access to records of the executive departments and agencies, which I believe will be of interest to your subcommittee.

Trusting this information will be of assistance to you, and with kind regards, I am,

Sincerely yours,

JOHN L. McCLELLAN, *Chairman.*

[Following is correspondence enclosed to illustrate the practices described:]

DEPARTMENT OF THE AIR FORCE,
Washington, June 15, 1960.

HON. JOHN L. McCLELLAN,
Chairman, Committee on Government Operations,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request, [October 22, 1959] for the views of the Department of Defense with respect to S. 2678, 86th Congress, a bill to provide for the reorganization of the safety functions of the Federal Government, and for other purposes. The Secretary of Defense has delegated to this Department the responsibility for expressing the views of the Department of Defense.

The proposed legislation would create a Federal Safety Division, under a Director of Federal Safety in the Department of Labor, with authority to direct and coordinate the safety educational programs and accident prevention procedures, establish minimum standards, inspect the premises and records, recommend budget requirements, and collect and analyze the accident data of all the Federal departments and agencies in furtherance of the Federal Employees' Compensation Act.

The Department of the Air Force on behalf of the Department of Defense is opposed to enactment of S. 2678 for the following reasons.

The primary responsibility of the military departments is to maintain the Armed Forces in a state of readiness to accomplish the assigned mission. This bill would permit the Director of Federal Safety, Department of Labor, to impose operating safety requirements on the military departments without cognizance as to the effect of those requirements on fulfillment of the military mission.

The safety measures of the military departments consist of unified programs integrated with all operations and covering military personnel, civilian personnel, and foreign national employees. The proposed bill relates to civilian employees covered by the Federal Employees' Compensation Act only, and would require a division of the military safety programs into two parts, one for such employees and another for other civilians and military personnel. This would divide responsibility, complicate the application of preventive controls and increase administrative costs.

Governmentwide safety authority vested in a Director of Federal Safety, as proposed by the bill, would improperly restrict the authority of the heads of the military departments with respect to the safety supervision and administration of their particular activities. Further, it would place the Secretary of Labor in a position of authority over the activities of departments of equivalent level. As safety is a management function, both the authority and responsibility for safety inherent in command would be usurped.

The proposed bill would give the Director of Federal Safety authority to develop and promulgate minimum safety standards and educational programs for the military departments. The military safety programs already accomplish these functions in consonance with established objectives. External influences would interfere with the attainment of these objectives and prejudice the priority and direction of safety efforts.

A provision of the bill would give the Director of Federal Safety authority to recommend to the Secretary of Labor the amount which should be included in the budget of each Federal agency to carry out safety programs and minimize hazardous work practices. This provision is unrealistic and violates the basic prerogative of heads of departments to determine their own fiscal needs based on the full knowledge of assigned tasks.

The proposed Director of Federal Safety would be empowered to collect and analyze data regarding safety standards and programs of the military departments. This function would increase administrative overhead, and complicate data collection procedures, without any apparent benefits.

The bill would authorize the Federal Safety Division periodically to inspect the premises of the military departments, review records, and interview personnel. This authority would interfere with command structure and responsibilities and would expose all military operations classified and otherwise, to policing and surveillance by an outside agency. Further, it is unlikely that inspections by persons outside the military departments, if authorized, could produce findings commensurate with expended effort in view of the highly diverse and specialized nature of many military activities.

The bill, as proposed, would further divide and attenuate the safety efforts of the military departments in that it includes no provision for such important elements as personal protective equipment and clothing and fails to take into account varying technical requirements, research needs, and other matters now inherent in the safety programs of the military departments.

The safety programs of the military departments have steadily advanced for the past several years with increasing benefits in the conservation of personnel and materiel resources. It is considered that any unjustified division of responsibility or diversification of interest and objectives would interfere with continued progress.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LEWIS S. THOMPSON,

Special Assistant for Manpower, Personnel, and Reserve Forces.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 25, 1960.

HON. JOHN L. MCCLELLAN,
Chairman, Committee on Government Operations,
U.S. Senate.
Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in response to your letter of May 13, 1959, requesting our views with respect to S. 1846, a bill to facilitate the discovery and recovery by the States of unclaimed personal property in the custody of Federal agencies, and for other purposes.

In general, S. 1846 would require Federal agencies to examine at least once each fiscal year all records in their custody or control with a view toward locating all unclaimed tangible and intangible personal property in their possession and transmitting to the Administrator of General Services certain specified data thereon. Where eligibility is established such property could either escheat to the States or the States could become custodians of the property under certain prescribed rules and regulations.

We are opposed to this legislation on the basis that all major agencies, and particularly the Administrator of General Services, would have placed upon them an extremely heavy and burdensome workload in connection with a function that appears to us to be both legally and administratively objectionable. Such legislation would require agencies to attempt to uncover or discover potential, unknown, and perhaps questionable claims against the Government, upon many of which the statute of limitations would have run. In the process of searching for such unclaimed property there would come to light property or potential claims that may not meet the definition of unclaimed property for purposes of this legislation yet it would be necessary to make a detailed review of all such cases to definitely ascertain whether eligibility requirements have or have not been met. Since untold num-

bers of individual records would have to be searched in attempting to discover such property, the extent of the workload is not measurable but such cost in a number of instances could conceivably be greater than the value of unclaimed property that may be discovered. In any event, the cost of such search would be substantial and it is not likely that the States would want to bear such burden, particularly when a minor amount of unclaimed property was uncovered.

We requested the Comptroller General to give us his views on S. 1846 and are attaching a copy of his reply for your consideration. We are in general agreement with his views as well as those of the Department of Defense, which agency likewise opposes this legislation.

The views of the Department of Justice, though requested, have not been received but we do not believe the views of that agency will differ significantly from those expressed by other agencies.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

(The following is the excerpt marked in the attached hearing, "Payments in Lieu of Taxes," hearing before the Committee on Government Operations, U.S. Senate, 86th Cong., 1st sess., on S. 910, p. 15:)

"Senator HUMPHREY. The Bureau of the Budget has advised the committee staff that pending reexamination of the entire field of Federal-State-local fiscal relations, no report on the pending bill will be submitted at this time, and no representatives of the executive branch departments and agencies have submitted reports except on purely technical aspects of the pending bill. These will be inserted in the record, together with communications submitted by various interested individuals and organizations at the conclusion of the hearings.

"If there is a representative of the Bureau of the Budget here, I would just like to tell him—if not, they can read the transcript—that this is the same bill that the Bureau of the Budget has once before supported, and it is rather peculiar that the Bureau of the Budget now finds itself speechless, incompetent, inert, inactive, and ineffective."

(The following marked excerpt from a staff memorandum is taken from "Passport Reorganization Act of 1959," the record of a hearing before a special subcommittee of the Committee on Government Operations, U.S. Senate, 86th Cong., 1st sess., on S. 2095, pp. 26-27:)
Bureau of the Budget control over agency reports on pending legislation

"For many years; this committee has followed the practice of requesting the views of the Bureau of the Budget and appropriate executive branch departments and agencies on all bills referred to it. This practice is based upon the facts that (1) the Bureau of the Budget has a policy-formulation and coordination role, for the entire executive branch and represents the President; (2) departments and agencies will have responsibilities in connection with administering the policy established in proposed legislative enactments; and (3)

executive branch department and agency personnel have accumulated valuable technical knowledge which may be helpful to the committee in processing proposed legislation.

"Over the years, the Bureau of the Budget and the executive branch departments and agencies have been most cooperative, and requested comments have been forwarded to the committee within a reasonable time.

"During the past 2 years, however, the staff of this committee has found it increasingly difficult to obtain agency comments on pending legislation, and there has been an average delay of from 4 to 6 months. Informal conversations with department and agency personnel reveals that although their comments are forwarded to the Bureau of the Budget for required clearance within a reasonable time, the Bureau retains them and fails to forward them to the committee. Informal staff discussions with Bureau of the Budget personnel result in promises of rapid action, but the reports are not forthcoming.

"As a result of this practice, the committee's business is seriously hampered since it is unable to obtain the official position of the executive branch, and it experiences great difficulty in obtaining from the official sources having the best knowledge of the facts, information necessary to enable the committee to perform its functions. In some instances the committee has found it necessary to act without the benefit of this information.

"Another practice which the Bureau of the Budget has engaged in is to hold back its own comments, as well as those of appropriate agencies, until the evening prior to an executive session of the committee at which final action is scheduled on pending bills. Although comments have been requested many months earlier, they are filed at the last moment and the committee has on occasion deferred action on pending matters until it has had an opportunity to examine and study the materials submitted.

"These practices have led the staff to conclude that either the Bureau of the Budget has suffered a breakdown and is unable to process the materials, or it is conducting a deliberate program of obstructionism, designed to prevent committee and ultimately Senate action on pending legislation.

"WALTER L. REYNOLDS,
Staff Director."

SENATOR GALE W. MCGEE

AUGUST 17, 1960.

DEAR SENATOR HENNINGS: In connection with the study in which your subcommittee is engaged concerning the withholding of information by executive offices, may I say that the experience which I have had since coming to the Senate has not been so much the refusal to give information as it has been to give a complete story.

Other instances encountered have been where Government agencies will write a long letter but will say nothing. This practice seems to have increased according to my information. On two occasions, I have written to the Department of the Interior, and the replies were carefully hedged so that the picture was not completed to my satisfaction.

I trust this information will be of assistance to your study. With kind personal regards, I am,
Sincerely yours,

GALE W. MCGEE, *U.S. Senator.*

SENATOR WARREN G. MAGNUSON

MAY 10, 1960.

DEAR CHAIRMAN HENNINGS: Your letter of May 3 inquires as to whether I know of any instances where the executive departments or administrative agencies have withheld information from this committee or its subcommittees.

There have not been any such instances, to the best of my knowledge.
Sincerely yours,

WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce.

SENATOR WAYNE MORSE

MAY 10, 1960.

DEAR SENATOR HENNINGS: I have your letter of May 3 asking my experience regarding instances of information withheld from Congress by executive departments and administrative agencies.

In the study of United States-Latin American relations, which has now been in progress for almost 2 years, by the Subcommittee on American Republics Affairs, no such instance has occurred. On the contrary, the Department of State and the other executive agencies involved have been most cooperative.

Sincerely,

WAYNE MORSE,
Chairman, Subcommittee on American Republics Affairs.

SENATOR FRANK E. MOSS

AUGUST 24, 1960.

DEAR TOM: I have received your letter on the study being made by the subcommittee of the withholding of information by executive departments and administrative agencies. I am submitting copies of a letter from the Aeronautics Commission of the State of Utah requesting information on an accident, and the reply of the Federal Aviation Agency to my inquiry for information on the case.

I am hopeful that this will be of assistance to the subcommittee.

Very sincerely yours,

FRANK E. MOSS, *U.S. Senator.*

[*The correspondence follows:*]

THE STATE OF UTAH,
AERONAUTICS COMMISSION,
Salt Lake City, January 27, 1960.

HON. FRANK E. MOSS,
U.S. Senator,
Washington, D.C.

DEAR SENATOR MOSS: Your attention is drawn to the attached copy of a general aviation accident report form. Please note the instruction at the top and bottom of the page: "Administratively Restricted."

In 1957 the Utah delegation conducted a running battle with the Civil Aeronautics Administration and the Department of Commerce, with the result that policies and releases were supposed to be changed in that such accident report forms would be available to other agencies and departments such as our commission. To date we have never received one such report.

The lame excuse given for preventing these reports from being available to interested parties was that the inspector would be open to suit. We challenge this because, to our knowledge, no one has ever been sued for expressing an opinion. We have done it in our department for at least the past 11 years, and I am sure that Mr. Bergin, the former director, did not hesitate in expressing his opinion.

Certainly there is no national security involved, and it seems to me that this administratively restricted application is purely a Washington formulated policy which has absolutely no justification other than for further secrecy in the Federal Government, thereby denying the public facts, figures, and information to which it is entitled.

Although the CAA under the Department of Commerce is now the Federal Aviation Agency, these report forms are still being used.

If you can take action to secure releases of these accident report forms to our department, it would be greatly appreciated. As you can see from the attached form, the entire analysis of the accident is compiled in this part.

We believe the public is entitled to know the probable cause factor of any type of aircraft accident as quickly as possible. Naturally there are instances, such as those of a major airline catastrophe, where a very detailed analysis and investigation must be conducted by the Civil Aeronautics Board. However, that should have no bearing on the majority of accidents occurring in the light of general aviation classification.

Very truly yours,

HARLON W. BEMENT, *Director.*

FEDERAL AVIATION AGENCY,
Washington, D.C. March 8, 1960.

HON. FRANK E. MOSS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOSS: This is in further reference to your letter of February 8, 1960, addressed to Mr. Quesada, concerning the administratively restricted portion of our accident investigation report.

We have received similar inquiries from Senator Bennett and Congressmen King and Dixon on this subject and have prepared identical replies.

Title VII of the Federal Aviation Act of 1958 provides that the Civil Aeronautics Board shall investigate all accidents involving civil aircraft, determine probable cause, and make public such reports as are deemed to be in the public interest. At present, we are investigating all nonfatal accidents to airplanes under 12,500 pounds at the specific request of the Board and submitting our reports of investigation to them. These investigative findings are carefully studied by the Board and a finding as to probable cause is made and published. The contents of these accident files are then public information and may be made available to anyone upon proper request.

In addition, we are authorized to investigate all civil aircraft accidents to assure that the duties and responsibilities of all segments of the Federal Aviation Agency are properly discharged. The reporting form to which you refer is designed exclusively for this internal purpose and may contain unsupported opinion, conjecture, or background material which we are not permitted to release as public information.

We will of course furnish upon proper request a copy of the pilot or operator's accident report and any other related factual information in our possession.

Sincerely,

OSCAR BAKKE,
Director, Bureau of Flight Standards.

SENATOR JAMES E. MURRAY

MAY 10, 1960.

DEAR SENATOR: Thank you for your letter of May 3 with respect to your subcommittee's continuing study on the withholding of information from the Congress by departments and agencies of the executive branch.

This committee, like many of the other legislative committees of the Congress, I suppose, has had frequent occasion to complain to the departments and agencies about the delay in receiving requested information from the executive branch on legislative proposals pending before the committee. I believe that such delays are occasioned more frequently because of the coordinating function of the Bureau of the Budget, rather than the inability of the individual departments to supply the information soon after it has been requested.

I can state, however, that since I became chairman of the committee, I cannot recall any instance where an agency in the executive branch has refused to provide the committee with requested data or information of any type.

Sincerely yours,

JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs.

SENATOR JOSEPH C. O'MAHONEY

AUGUST 18, 1960.

DEAR SENATOR: I have the request for information of the committee with respect to its desires to bring up to date its study of the withholding of information by the executive branch of the Government.

The most notable example in which I have been involved myself arose out of the Dixon-Yates matter which the Senate Antitrust and Monopoly Subcommittee investigated in 1955. You will recall that Admiral Lewis Strauss, then Chairman of the Atomic Energy Commission, was identified in the hearings as the prime mover in the formulation of the Dixon-Yates contract.

Despite the President's public announcement calling on all persons connected with the matter to speak freely and candidly, Mr. Strauss did not do so. His argument was that a conversation between himself and the President was privileged and he would not disclose it except with the concurrence of the President. He extended this argument to include advisers to the President—this despite the fact that the public was led to believe by widely published statements made by the President that all connected with the matter were to divulge their knowledge.

The information which Mr. Strauss was attempting to withhold was not unimportant details. It had to do with the attempt by Mr. Strauss and others to repeal, in effect, the Tennessee Valley Authority Act, not by legislation but by means of a Government contract. Mr. Strauss' activities and his refusal to be candid with the Antitrust and Monopoly Subcommittee were the basis for my opposition to the confirmation of Mr. Strauss as Secretary of Commerce. I discussed my opposition at some length in a speech delivered on the floor of the Senate on June 15, 1959. It may be found on pages 9938 through 9952, a copy of which I am glad to enclose.

With every good wish.

Sincerely yours,

JOSEPH C. O'MAHONEY.

(Following is the excerpt from the Congressional Record of June 16, 1959, pp. 9938-9952:)

NOMINATION OF LEWIS L. STRAUSS TO BE SECRETARY OF COMMERCE

THE PRESIDING OFFICER. The question recurs, Will the Senate advise and consent to the nomination of Lewis L. Strauss, of New York, to be Secretary of Commerce?

MR. O'MAHONEY obtained the floor.

MR. MANSFIELD. Mr. President, will the Senator yield, without losing his right to the floor?

MR. O'MAHONEY. I yield.

MR. MANSFIELD. I suggest the absence of a quorum. Before the quorum is called, I suggest that the attachés of the Senate notify the offices of Senators that this may be a live quorum.

THE PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE INVASION OF LEGISLATIVE POWER

Mr. O'MAHONEY. Mr. President, yesterday I announced it would be my purpose today to discuss the pending nomination of Lewis L. Strauss to be Secretary of Commerce. The nomination made by the President was recommended by the Interstate and Foreign Commerce Commission, by a vote of 9 to 8, for confirmation by the Senate.

I am one of those who believe that the nomination should not be confirmed. It was for that reason that on yesterday I gave notice of my intention to discuss the question today, in the hope that it might be possible to secure a quorum for the purpose of laying before the Senate some of the fundamental, basic facts which are involved in this matter. I am told, however, that some of the Members of the Senate are absent because there is pending a policy committee meeting of the minority group.

I wish that I could talk to that policy committee meeting instead of talking to empty desks on the floor of the Senate. If I were to talk to them, my purpose would be to urge upon the minority Members of the Senate that they send a message to the President of the United States asking him to withdraw the nomination of Admiral Strauss, in the interest of promoting comity and community action between the executive and the legislative branches of the Government.

Of course, I do not believe they will do that, and I doubt whether it would be worth while for anybody to make an attempt to induce them to do so. But I should like to say to the Senate and to the public at large that the constitutional fathers, when they drafted the document upon which our Government stands, believed that the lawmaking power was the most important power the new Government could possess because in their view the new Government to be established upon this continent should be a government of the people, and not a government of any group or class or man. They provided for that in the very first article of this immortal document. When I say "immortal," I do not mean that it necessarily will not pass into the limbo of history, because I think there is now grave danger that the Congress itself will sacrifice the great and honorable position into which it was placed by the Founding Fathers.

LEGISLATIVE POWER

The Founding Fathers described the Congress, what it was, and what its powers would be, in the very first article, saying in words of simple connotation: "All legislative Powers herein granted shall be vested in a Congress of the United States."

Observe that language: "All legislative Powers herein granted shall be vested in a Congress of the United States."

The first article did not say "all powers shall be vested in the judiciary"; it did not say they shall be vested in the executive; it said they shall be vested in the Congress, because the Congress is composed of representatives of the people.

As this document, the Constitution of the United States, was written, the House of Representatives alone was chosen by the people. The Members of the Senate were chosen by the State legislatures. The time came when the people of the United States believed that the people should have the choice of electing the Senators, too; and so the Constitution was amended, in the way prescribed by the Constitution itself, and it was then ordained that the Members of this body should be elected not by the legislatures of the several States, but by the people of the several States.

That action was an enactment of the whole people of the United States, confirming the belief, which had been growing and growing and growing, that this Government, as an agency of the people, and not of any group or class or individual, was becoming a model for the whole world.

Things have changed. Now the stark fact confronts us, as I am about to demonstrate, that the legislative power is passing from the people to the executive.

POWER PASSING FROM THE PEOPLE

Mr. President, I hold in my hand a volume of U.S. Statutes at Large. This volume contains every public law enacted by the Congress of the United States in the 1st session of the 85th Congress in 1957—one volume. This volume, excluding the index at the back, contains 649 pages on which the laws are printed. Private laws follow the listing of public laws. Then there is a list of concurrent resolutions and an index including several other pages. This entire volume, Mr. President, does not embrace more than 750 pages but it contains all the laws enacted by one session of Congress.

Now I am going to demonstrate what is enacted by Executive order. I have in my hand part 4 of volume 22 of the Federal Register containing a portion of the Executive orders and regulations issued by President and various departments of Government. This is only one volume.

Let me have another volume, Mr. O'Callaghan.

And let me have another one.

I am not a juggler, but there are some jugglers with the laws of the United States now operating in the Government of the United States.

Let me have another volume, Mr. O'Callaghan. I do not want to fall carrying that volume, so hold it for a moment.

There are 1, 2, 3, 4, 5 volumes, each one of which is at least 3 times as large as the volume containing the public laws of the Congress.

Thank you, Mr. O'Callaghan, for No. 6. Are there any more? [Laughter in the galleries.]

The PRESIDING OFFICER (Mr. YOUNG of Ohio in the chair). The visitors in the galleries will remain silent. They are guests of the Senate and will conduct themselves as such.

Mr. O'MAHONEY. Are there any more? Stand and shake your head, Mr. O'Callaghan. I want this to register with the occupants of the galleries.

VOLUMINOUS EXECUTIVE ORDERS

There are six volumes of the Federal Register, containing the Executive orders of the President of the United States, and the regulations of the departments of Government, which have the force and effect of law. Although the Constitution of the United States provides that the President shall not make an appointment of a Cabinet member without the advice and consent of the Senate, it took six volumes to print the regulations issued by Cabinet officers, together with the Executive orders of the President.

I show these volumes, Mr. President, to the Senate, to the occupants of the galleries, and particularly to those in the Press Gallery.

I turn the volumes around, so that the press representatives may see the backs of these six volumes of the Federal Register, which the Government had printed at the Government Printing Office, and which contain the Executive orders and regulations issued by the executive branch of the Government during the year 1957, the same year when this small volume I balance in my hand was sufficient to print all of the public laws.

There is growing up—and this is the question I wish to discuss with the Senate, with the country, with the occupants of the galleries, with the press and with the empty seats on the Republican side, save only the seat of the junior Senator from California [Mr. Kuchel]—

Mr. KUCHEL. Mr. President, will my friend yield?

Mr. O'MAHONEY. I yield.

Mr. KUCHEL. Let the Record show that the time is 1:30, and that my colleagues are having their weekly Republican policy luncheon meeting, something which I believe the Record also shows is a custom unknown to and unshared by my colleagues on the Democratic side.

Mr. MCGEE. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield to my colleague from Wyoming.

Mr. MCGEE. Would the distinguished Senator from California suggest the Republicans might be having a policy session at this luncheon? We believe, on the Democratic side, that we ought to have each individual Senator make up his own mind on these questions.

Mr. KUCHEL. I am sure my able friend from Wyoming believes that.

Let me say, Mr. President, that one of the delightful and constructive things which Republican Senators share is this weekly policy luncheon, at which we break bread together and discuss our country's problems, sometimes a little vigorously, and then, responsive to God and our consciences and the Republican Party in about that order of things, we come to the Senate Chamber, where we cast the votes we believe we should in the public interest.

Mr. O'MAHONEY. Mr. President, I want the Record to show that it is my privilege to serve on one of the great committees of the Senate with the Senator from California, who is the assistant minority floor leader; that is, the Committee on Interior and Insular Affairs. And let me say to the Senate that in that committee from time to time we have received rather comprehensive evidence of the pervasive influence of Wall Street upon the development of western resources. The Senator from California knows well that this administration put an end to the program of making synthetic fuel from coal and oil shale.

The Senator from California knows well that one of the great corporations engaged in the production of petroleum in the Middle East, in alliance with others, is now seeking to obtain control of the great oil-shale deposits of the United States. I say, Mr. President, the time has come when Members of Congress would better give heed to the gradual slipping away of the authority of Congress and its absorption by the executive branch of the Government.

THE PRESENT CASE

It may be asked, Why does the Senator from Wyoming raise this question of statutory law and executive law in the present case? This is the reason—and I wish to state this question very clearly and very bluntly: Can a valid claim for executive privilege, that is, the privilege to refuse to disclose what has been done, be based upon an invalid contract? Will anyone say that such a claim can be based upon an invalid contract? No one would say that. My good friend from California, who asked me to yield to him a moment ago so that he could announce that the Republican Members of the Senate are enjoying a luncheon, does not seek to interrupt me now to answer that question.

INVALIDITY OF CONTRACT

A valid claim to executive privilege; that is, to the privilege of denying to the people of the United States the right to know what their Government is doing, cannot be founded upon an invalid contract. Yet that is precisely what the President's nominee for Secretary of Commerce has been doing, certainly throughout his career as head of the Atomic Energy Commission, when there was challenged the contract which he signed, the contract which he helped to negotiate with the officers of two private utility holding companies in order to establish a then nonexistent subsidiary of such holding companies to take over from the Government of the United States a contract to produce electric power and sell it to the people of Memphis, Tenn.

Do I say it was an invalid contract? Do I ask Members of the Senate to shape their votes on the question of confirmation on the basis of my statements? Not at all. Disregard my statements, so far as they are statements urging Senators to act this way or that way. Give them only the weight to be accorded to a colleague's opinion. But in this matter I cite the fact that the Department of Justice is the authority which I am now using. The Department of Justice has filed a pleading which declares that the contract about which Admiral Strauss refused to testify is an invalid contract; and he claims executive privilege to keep his knowledge of what happened within his own breast.

Mr. President, I say again that this contract, about which Admiral Strauss, when he appeared before the Judiciary Committee, refused to give testimony, is a contract which the Department of Justice has denominated an invalid contract in the defense which it filed in the courts against the suit brought by Messrs. Dixon and Yates in the Court of Claims for damages in excess of \$3 million, by reason of the fact that the President ordered the cancellation of the contract by the Atomic Energy Commission.

So my authority for the statement that there is no executive privilege involved here, as claimed by Mr. Strauss, is based upon these two irrefutable facts:

First that President Dwight D. Eisenhower called upon the Atomic Energy Commission, of which Admiral Strauss was the Chairman, and demanded that the contract be canceled. It was canceled. Second, the Department of Justice filed a pleading in defense, alleging that the contract was invalid.

In order that there may be no doubt about this, I shall read a few extracts from this pleading. This is in the U.S. Court of Claims. It was filed by the Mississippi Valley Generating Co. This was the newly created subsidiary of the Middle South and Southern Holding Cos. which made the offer that the nominee has declared from the beginning to the end to have been a sound and proper contract. Even today, after the cancellation of the contract was ordered, he contends before the Committee on Interstate and Foreign Commerce, as he contended before the Judiciary Committee, that the contract was a valid one. These are the affirmative defenses prepared by the Department of Justice against this suit for damages. I am reading from page 167 of the report of the Committee on the Judiciary:

"The alleged agreement set forth in the petition is in violation of the statutes and laws of the United States and is unlawful, null and void, and contrary to public policy for the following reasons, among others."

I hope that this message from the Department of Justice may be carried to the luncheon of our Republican friends. I am glad to see the Senator from North Dakota [Mr. Langer] in his seat on the floor of the Senate. He was a member of the subcommittee of the Committee on the Judiciary which held the hearings before which the nominee for the Office of Secretary of the Department of Commerce refused to answer the questions of the members of the committee.

Mr. President, send the word to the luncheon hall, wherever it may be, where the Republicans are gathered, that the Department of Justice says that the Dixon-Yates agreement, set forth in the petition, is in violation of the statutes and laws of the United States, and is unlawful, null and void, and contrary to public policy.

Are we, the Members of the Senate, going to confirm the nomination of this nominee to be Secretary of Commerce, a man who insisted upon pushing through to fruition a contract which the Department of Justice says is null and void? They will not answer me now, because they are not here. But when they return, I wonder how many will rise and say, "Certainly, the Senate of the United States should confirm the nomination of a man who forced through a contract which the Department of Justice says is null and void, and should not be given any weight or value in the consideration of the Government of the United States."

They have filled the airways and the newspapers with the false claim that the President ought of right to be able to choose for himself, without the advice and consent of the Senate, any person to be a member of his Cabinet.

Now I will tell the Senate one of the reasons why that is not so.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. MAGNUSON. I wonder if the Senator would yield at that point regarding the contract.

Mr. O'MAHONEY. I am glad to yield.

Mr. MAGNUSON. I merely wish to add to the Senator's excellent statement that the nominee, in answer to a direct question by members of the committee, as to whether he still thought the Dixon-Yates contract was a good contract, and not contrary to the public interest, still insists, in his direct answer to members of the committee, that it is a good contract.

Mr. O'MAHONEY. I thank the Senator.

Mr. MAGNUSON. He takes that position even at this late date, after all the hearings and the pleadings by the Department of Justice in the Court of Claims, that the contract is not only null and void, but also contrary to public policy.

Mr. O'MAHONEY. This is the next statement in the Department of Justice pleading:

"DEPARTMENT OF JUSTICE PLEADING

"The alleged agreement is contrary to public policy, unlawful, and null and void by reason of the activities of one Adolphe H. Wenzell, a salaried vice president of First Boston Corporation of New York City, a financial institution specializing in the underwriting, sale, and marketing of corporate securities, including, particularly, those of public utilities.

"During periods in the years 1953 and 1954, Wenzell was employed by the Bureau of the Budget as a consultant with respect to problems concerning the furnishing, operation, and expansion of electric facilities in the area of the Tennessee Valley Authority (hereinafter referred to as the TVA) and concerning important aspects of the project involved in the alleged agreement. For a portion of said time the Bureau of the Budget was, in collaboration with AEC, actively engaged in the consideration and development of the project subsequently embodied in the alleged agreement."

I shall not read the remainder of that statement, but I ask unanimous consent that it may be printed in the Record at this point.

There being no objection, the statement was ordered to be printed in the Record, as follows:

"During said period, Wenzell consulted with, advised, and represented the Government in certain important matters involved in the negotiations with respect to the alleged agreement and the project covered thereby, including the cost of the project and the costs involved in the sale by plaintiff of its securities to financial institutions in order to finance the project. During the same period Wenzell was, at all times, a salaried vice president of First Boston Corp. who consulted with, advised, and represented the First Boston Corp. with respect to its relation to said project, the alleged agreement, and its relations with plaintiff. During this period Wenzell further consulted with and advised plaintiff with respect to various matters relating to the project and the alleged agreement, which involved to a material extent the same matters concerning which he was employed to consult with, advise, and represent the Government, and in fact

he assisted in negotiating and promoting the very project and alleged agreement between plaintiff and defendant which resulted in the employment by plaintiff of First Boston Corp. on behalf of plaintiff and as plaintiff's agent to effect the sale of various banks and insurance companies of plaintiff's securities, in an aggregate principal amount between \$99,815,000 and \$120 million proposed to be issued by plaintiff to finance said project.

"At the time plaintiff executed the alleged agreement, plaintiff had full knowledge of the duality of interests and relationships of Wenzell. The role played by Wenzell in consulting with, advising, and representing the Government, the First Boston Corp., and plaintiff with respect to the same project and the same alleged agreement, with contemplated benefits to the First Boston Corp., as well as to plaintiff, involved a conflict of interest so contrary to public policy as to render the alleged agreement null and void."

Mr. O'MAHONEY. I should add, however, that there is stated here under paragraph (C) of the defense: "Any contract"—I am now quoting from the Atomic Energy Act of 1954—"Any contract hereafter entered into by the Commission pursuant to this section shall be submitted to the Joint Committee"—That is the Joint Committee on Atomic Energy of Congress—of the Senate and of the House—"shall be submitted to the Joint Committee and a period of 30 days shall elapse while Congress is in session (in computing such 30 days, there shall be excluded the days on which either House is not in session because of adjournment for more than 3 days) before the contract of the Commission shall become effective: *Provided, however,* That the Joint Committee, having received the proposed contract, may by resolution in writing, waive the conditions of all or any portion of such 30-day period."

That is the end of the quotation from the law.

Now the Department of Justice:

"In November 1954, the alleged agreement was submitted to the Joint Committee on Atomic Energy of the Congress which by resolution purported to waive all of the 30-day waiting period. The submission, in November 1954, of the alleged agreement to the Joint Committee and the action taken by said committee in that month with respect thereto was not in compliance with the provisions of the act."

Then were set forth the reasons.

So the Department of Justice is the authority for the statement that the waiver by the Joint Committee was not in accordance with the law either. That action in November 1954, was not the action of the Congress which was elected in 1954; it was the action of the Congress which was elected in 1952, when members of the party who now, save for two excellent exceptions, are absent from the Senate floor while this matter is being discussed were in control of Congress. I am not surprised that they do not like to hear facts of this kind; just as I am not surprised that Admiral Strauss, the nominee for the position of Secretary of Commerce, did not want to answer questions which were propounded to him by the subcommittee of the Committee on the Judiciary.

Mr. President, I can show to my auditors that portion of the record of the hearings of the Committee on the Judiciary in which the Director of the Bureau of the Budget, Mr. Rowland Hughes, testified. He

was called as a witness because, as the Department of Justice said, Mr. Wenzell was employed by the Bureau of the Budget. Mr. Wenzell was the famous vice president of the First Boston Corp., a financial institution engaged in floating bonds and other securities; the famous vice president whose counsel before the committee, Mr. Arthur Dean, is now a leading member of the New York City law firm of Sullivan & Cromwell, of which the late John Foster Dulles was formerly the principal member.

WENZELL'S TWO HATS

Mr. Arthur Dean, counsel for Mr. Wenzell, testifying before our committee, acknowledged that Mr. Wenzell was wearing two hats, one hat that of the Bureau of the Budget, the other hat that of the First Boston Corp., which was apparently interested in securing a flotation of bonds and other securities.

The First Boston Corp. afterward disclaimed any interest in getting a fee out of this contract. The First Boston Corp. became worried by the situation which was developing; so they withdrew. Of course, it was well that they did, because the Government of the United States, by the order of the President of the United States, canceled the contract, in spite of the fact that the nominee for the position of Secretary of Commerce felt then, and feels now, that it was a sound contract.

I read the testimony of Budget Director Rowland Hughes, from page 1220 of the hearings of the subcommittee of the Committee on the Judiciary on the Dixon-Yates contract. This statement is very important. I shall read it deliberately, because it is the statement of the head of the Bureau of the Budget, appointed by President Eisenhower, telling what he knew. These are the words he used in talking about the contract:

"I did not know anything about this, of course. This came to me as a finished job by Messrs. Dodge and Strauss, to find the solution by providing a relief to the TVA of its power in the power demands, of the AEC power demands on TVA."

Of course, Mr. Hughes was talking under pressure, and some of his language is a little confused, but not this part. These words are clear. Even the editors of the newspapers who are clamoring to let the President have his own Secretary of Commerce, and that the Senate should waive its constitutional rights, to give its consent, should understand this language. Let them read it. Let the members of the Press Gallery take notice:

"I did not know anything about this, of course. This came to me as a finished job by Messrs. Dodge and Strauss."

Mr. Hughes was washing his hands clean of any participation in the preparation of this invalid contract; but Admiral Strauss is still proud of it, although the President asked him to cancel it.

Shall the Senate place the seal of its approval upon this man, who is still in government, and who Director of the Budget Hughes testified was one of the authors of the invalid contract? Mr. Dodge, the other author, was the original Director of the Bureau of the Budget under the present administration. Admiral Strauss undertook to initiate the attempt to have the Atomic Energy Commission produce, by a contract of this kind, electric energy for the Tennessee Valley

Authority. He was not a member of the Tennessee Valley Authority. He was Chairman of the Atomic Energy Commission, not of the TVA. Why, under heaven, did Admiral Strauss, the head of the Atomic Energy Commission, want to have a contract prepared for the benefit of the TVA? It was not really for the benefit of TVA. It was anything but for the benefit of TVA.

Mr. Dodge testified before our committee—and he made a clear statement there—that he sought to bring about a diminution of the activities of TVA. He wanted to cut the TVA appropriation, and he wanted to find some way, by some other operation, not a Government operation, to invade the area served by the Tennessee Valley Authority. That was a legitimate purpose. That was a question of public policy. That might properly have been a recommendation to the Senate and House of Representatives by the President. The Constitution authorizes the President to recommend to the law-making body what should be done. Every President has delivered his state of the Union message, in which—in compliance with the Constitution—he has recommended the enactment of legislation.

Mr. Dodge wanted legislation of that sort enacted. He wanted to have public power supplanted by private power. That is a perfectly legitimate desire.

CONTRACT BYPASSES CONGRESS

Mr. President, here I may say that this controversy over the question of the confirmation of the nomination of Mr. Strauss has been misrepresented as being a part of the conflict between public power and private power. That misrepresentation is intended, in order to invite the cooperation of the conservatives, who oppose public power, to support the nomination of Admiral Strauss. That is not the question at all.

The question is whether the Executive shall legislate by executive action, instead of letting the Congress do so by law. That is the question. If the Senate votes to confirm the nomination of Mr. Strauss to be Secretary of Commerce, the Senate will be placing its stamp of approval upon Mr. Strauss and it will be placing its stamp of approval upon the efforts to cut across the legislative power and, by executive action, to do something which the Congress would not willingly do.

They were afraid to take the risk trying the legislative method. So, instead, they sought to proceed by that undercover method, through executive action.

Mr. Dodge resigned and Mr. Hughes took over the place. Mr. Hughes continued to keep Mr. Wenzell on the job. It was Mr. Dodge who brought Mr. Wenzell to Washington, and put him in the Bureau of the Budget, to look up facts and figures in regard to power costs in the TVA, and to make calculations in regard to the interest rate upon a financial issue. Mr. Wenzell came from the First Boston Corp., of which he was vice president. Undoubtedly he was very well qualified to do such things. But even while he wore the hat of vice president of the First Boston Corp., he was recommending the terms and the conditions which were the basis of the invalid contract against which the Department of Justice is now defending the Government.

To show what a perfectly extraordinary effort that was to evade the Constitution of the United States and to detract from the legislative power and authority of Congress—an attempt by executive action to do what the Constitution says only the Congress can do—let us remember that the Constitution provides that “All legislative powers herein granted shall be vested in a Congress of the United States.”

So, Mr. President, if the Senate were to place its stamp of approval upon the man who was the head and the front in the creation of that invalid contract, the Senate would be cutting its own throat. But, more than that, the Senate would then be destroying the only legislative body in the United States in which all the people of the United States have representatives.

Mr. President, it was not my intention to discuss this matter at all, except that I felt it my duty to lay clearly before the Senate the essential facts, so that no Member of the Senate could be in any possible emotional doubt as to what his duty might be.

Mr. President, this question is not one of supporting the President. It was the President who canceled the contract that Strauss organized. This question is not one of supporting private power instead of public power, because the invalid contract did not succeed in doing that, and there has been no change.

This question does not even involve a personal attack upon Admiral Strauss. I disavow completely, Mr. President, the slightest animosity toward Admiral Strauss. I confronted him in the hearing room. I sat across the table from him. I listened to his testimony. I interrogated him. I made no effort to entrap him; and probably I could not have done so. He is a very able man.

But I will say here that anyone who reads the record will know that the whole plan was one to short circuit the legislative power of the Congress. It was a clear case of an effort to change the law by which the Tennessee Valley Authority had a certain area to serve. But, more than that, it was a clear case of an intent to invade the legislative power of Congress, by authorizing the Atomic Energy Commission to make a new sort of contract—for which no authority of law had been established—to involve the Bureau of the Budget, the Securities and Exchange Commission, the Federal Power Commission, and the Atomic Energy Commission in a concerted action, not for the national defense, but for the extension of a special privilege to a favored few, through an invalid contract. Mr. President, the accuracy of that statement cannot be denied by anyone. It was a contract of special privilege. There was no effort to ask for public bids on the contract. If the contract had been authorized, the law would have required public bidding.

CONTRACT OF SPECIAL PRIVILEGE

The contract was not for national defense. It was solely for the purpose of giving a nonexistent subsidiary of two holding companies the power to do a thing which really was prohibited by the Securities and Exchange Act. And, Mr. President, I say that is something that cannot be tolerated in a free legislature or by any part of a free legislature.

Mr. President, at this time I wish to quote a declaration made by the nominee before the Senate Subcommittee of the Judiciary Committee which conducted the investigation. The quotation appears on pages 1163 and 1164. Mr. Strauss was answering the able Senator from Tennessee [Mr. Kefauver] who was inquiring about the basis for the claim by Mr. Strauss of executive privilege. Senator Kefauver asked, in substance, on what Admiral Strauss based his claim of executive privilege.

Mr. Strauss replied as follows:

"Yes; on the theory that a conversation between myself and an aide to the President or the President is a privileged conversation as long as I am a member of the Atomic Energy Commission."

I read further from the hearing:

"Senator KEFAUVER. And the Attorney General refused to back up Mr. Armstrong"—he was with the Securities and Exchange Commission—"and suggested that he did not have a privilege and should not claim it.

"Mr. STRAUSS. If I am advised that I have no privilege by the Attorney General, I might still feel that my construction of the Constitution was one by which I should abide; but I have not received any such instruction and I have not asked for it, Senator.

"Senator KEFAUVER. Admiral Strauss, will you ask the Attorney General for his opinion about your testimony?

"Mr. STRAUSS. I will certainly do so, Senator."

Not a single word, so far as I know, has been heard since that time, except that the Department of Justice has filed a defense against the invalid contract by stating that the contract is invalid and never should have been entered into.

Mr. SCOTT. Mr. President, will the distinguished Senator from Wyoming yield?

Mr. O'MAHONEY. I yield.

Mr. SCOTT. Secretary Strauss took the usual oath of office to support and defend the Constitution of the United States. It is not my understanding that he took an oath of office saying that he would support and defend the Constitution of the United States as interpreted by the Attorney General. Therefore, may I ask the distinguished Senator from Wyoming if a sworn officer of the United States is not justified in stating that if he believes he is being asked to violate the Constitution, he should not violate it because some legal officer of the Government has advised him, for whatever reason, to answer certain questions.

Mr. O'MAHONEY. The Senator from Pennsylvania would not have asked that question if, instead of participating in the luncheon of the minority Members, he had been on the floor to listen to the beginning of this poor discourse. He would have heard the quotation from the Director of the Budget, Mr. Rowland Hughes, since departed from that position—as many of the others who participated in the beginning are no longer in official positions—that the contract came to him as a finished job from Dodge and Strauss; that Strauss initiated it. The Senator also would have heard me ask the question, "Can a valid claim for executive privilege to deny to the representatives of the people information about public affairs be based upon his participation in writing an invalid contract?"

Mr. SCOTT. May I—

Mr. O'MAHONEY. Will the Senator answer the question?

Mr. SCOTT. I will be glad to answer the question by beginning at the first part of it.

Mr. O'MAHONEY. I invite the the Senator to go right through to the end.

Mr. SCOTT. If I have missed any part of the question by the Senator from Wyoming, I am sorry. I have discussed this matter with him earlier. I think I am familiar with the point he makes. I cannot apologize for attending a meeting of the minority policy committee.

Mr. O'MAHONEY. I do not ask the Senator to apologize.

Mr. SCOTT. I am only glad the minority policy committee meets; I think it is most fortunate.

Mr. O'MAHONEY. The majority policy committee meets, too. The Senator is now making the natural argument of the advocates of the confirmation of the nomination of Strauss, trying to turn the issue with innuendoes and suggestions of impropriety or failure to do something.

Mr. SCOTT. On the contrary—

Mr. O'MAHONEY. Let us deal with the facts.

Mr. SCOTT. On the contrary, there is but one fact involved in my original question, and that is, Is not a man who takes an oath to support and defend the Constitution of the United States entitled, in view of that oath, to determine for himself whether he must answer questions, or whether the oath in fact inhibits or prohibits his answering the questions?

Therefore, nothing the distinguished Senator from Wyoming has said with regard to what Mr. Rowland Hughes may have said has any bearing whatsoever on the attempt to make it appear that an honorable public servant said—and I commend him for it—"If in my judgment I am asked to answer a question which violates my oath of office, I will not answer it."

Mr. O'MAHONEY. The Senator is making an incorrect premise. The fact is—and this was also stated before the Senator from Pennsylvania came on the floor—it was the President of the United States who ordered Admiral Strauss to cancel the contract; and even after that order to cancel, Mr. Strauss continued to proclaim that the contract was a sound one.

I suggest that the members of the minority of the Senate would be better engaged in defending the action of the President of the United States than in defending the action of a nominee who insists that he is his own judge as to what he should do in a case involving an invalid contract which was deliberately contrived to shortcircuit the constitutional legislative power of the Congress.

Mr. SCOTT. I assume the Senator from Wyoming has read the hearings. Under that assumption, the Senator doubtless will recall that the remark of the Secretary of Commerce, to the effect that the contract was a sound one, was accompanied by a statement somewhat to the effect that, in view of present costs of contracts, it would have been a better contract than that which was entered into. He used the phrase "sound one" with reference to some such language as "in light of current costs."

I am not here to argue an ancient contract with the Senator from Wyoming. I am here merely to point out that I think a public servant must always be his own judge as to whether he is adhering to his oath of office. That was the point which Secretary Strauss was making, and it seems to have been lost sight of in the constitutional address of the Senator from Wyoming.

I thank the Senator for yielding to me.

Mr. O'MAHONEY. I am always glad to yield to the Senator, but I must say his remarks are, in my judgment, irrelevant. They do not deal with the fundamental facts, first, of course, of the invalidity of the contract; second, that the President had ordered this contract to be canceled; third, that Admiral Strauss is not a lawyer; fourth, that the Attorney General is a lawyer; and finally, that, so far as I know and so far as the record shows, the Attorney General never gave the admiral any advice, or, if he did, the admiral did not choose to take it.

Mr. SCOTT. The very able Senator from Wyoming frequently has cause to disagree with the Attorney General. I would suggest to him that he ought not to deny that privilege to others.

Mr. O'MAHONEY. Mr. President, I was discussing the importance of the issue of Executive privilege. First of all, let me say that we are asked to act upon the confirmation of a nominee to be Secretary of the Department of Commerce.

We must bear in mind that the question of the Executive privilege involves the authority of a person in the executive branch of the Government to refuse to answer questions asked by a committee of Congress. This is a question now pending before the Congress in various committees, both in the Senate and in the House of Representatives.

A document which I am trying to put my hands on does not seem to be readily available, but I have another which is equally important and which bears upon this question.

POWERS OF SECRETARY OF COMMERCE

We are dealing with the head of the Department of Commerce. How important this position is requires, probably, no particular argument. The Secretary of Commerce deals with all the trade and commercial problems of the United States.

On November 25, 1957, President Eisenhower by Executive Order No. 10741 established the Trade Policy Committee. This Committee consisted of the Secretaries of State, Treasury, Defense, Interior, Agriculture, Commerce, and Labor, with the Secretary of Commerce as its Chairman. Prior to this Executive order, recommendations on the administration of the Trade Agreements Act had been made directly to the President by an interagency committee known as the Trade Agreements Committee. This Committee, originally established in 1934, is composed of many representatives of the executive agencies and is responsible for developing detailed information and recommendations concerning the administration of the trade agreements program. The representative of the Department of State serves as Chairman.

But that is not so under the new Executive order.

The functions assigned to the Trade Policy Committee by the Executive order of November 25, 1957, are to: First, make recommendations to the President on basic policy issues arising in the administration of the trade agreements program, which, as approved by the President, shall guide the Trade Agreements Committee; second, advise the President with respect to recommendations made by the Trade Agreements Committee; and third, make recommendations to the President as to what action he should take on escape-clause reports submitted by the Tariff Commission.

As noted above, the decisions of the Trade Agreements Committee, under the chairmanship of the Department of State, are reviewed by the Trade Policy Committee under the chairmanship of the Secretary of Commerce. We therefore now have the situation where two different agencies control separate committees which formulate the policies. Through the Trade Policy Committee policies regarding the foreign trade of the United States are no longer a matter of foreign policy under the responsibility of the Department of State but have become a function of the Department of Commerce.

The new role by the Department of Commerce was readily admitted to. During the 1958 hearings on the Trade Agreements Act extension, former Secretary of Commerce Sinclair Weeks testified:

"The United States today is by far the most important trading nation in the world. With world trade's increasing importance to us, the Department of Commerce is playing an increasingly significant role in the formulation of our foreign-trade policies.

"Additionally, the President has strengthened Commerce's role in trade-agreement matters and in foreign economic questions, generally, by creating a Cabinet-level Trade Policy Committee, chaired by the Secretary of Commerce. This Committee now directly advises the President in the administration of the trade-agreements program.

"The recommendations made to the President by this body include action in escape-clause cases. The Committee guides the direction of GATT negotiations and is consulted on the proposed composition and membership of our delegation to GATT meetings. The Committee reviews and advises the President respecting all recommendations of the interdepartmental Trade Agreements Committee, and is consulted on other matters which influence this country's position in world trade."

That is the testimony of former Secretary of Commerce Sinclair Weeks.

Under the new Executive order, if this nomination is confirmed, the man who has defended the invalid contract and who has refused to give information with respect to it will be the head of the new Trade Policy Committee. I know, as every other Member of the Senate and each Member of the House of Representatives knows, that Members of this body and Members of the House of Representatives have received countless calls from their constituents about the disastrous effects upon domestic commerce of the actions which are taken under the trade agreements policy.

This morning, Mr. President, as a member of the Committee on Interior and Insular Affairs, I was present during a discussion of a bill introduced by a distinguished Senator from Colorado [Mr. Allott] to provide import quotas on fluorspar. This is a problem which is

very important to the mining interests where any kind of fluorspar is developed.

The Department of State does not desire to have imports of fluorspar restrained. That is the policy of the administration. That is the policy which will be handled to some extent by the Trade Policy Committee of which the new Secretary of Commerce will be Chairman, having priority over the Secretary of State.

This fluorspar instance is only one of many instances in which domestic industries suffer by reason of the delegation by the Trade Agreements Act of congressional power to the President and his anonymous assistants. Lest there be any misunderstanding about the matter, I want the record to be clear that from the very outset in 1939, when Cordell Hull was Secretary of State and was urging the adoption of the reciprocal trade policy, I opposed the making of any foreign agreement without the approval of the representatives of the people of the United States in the Congress of the United States.

Knowing that the movement was so strong that these trade agreements could not be regarded as treaties, I offered an amendment to require that they should not become effective until approved by a majority vote of both Houses. My plea was that the representatives of the people ought to be in their constitutional position to defend the trade needs of their own constituents in the lawmaking body of the Congress. But my amendment was defeated, by eight votes, if I correctly recall.

The amendment which was offered by the then Senator from Virginia, Mr. Carter Glass, to make the agreements ineffective unless approved as treaties, was defeated by about six votes. As a matter of interest, I say that if those who supported Senator Glass' treaty amendment had supported my amendment, it probably would not have been defeated; but that is neither here nor there.

The point I wish to make is that the new Secretary of Commerce, who proclaims the right of executive privilege to refuse to talk about the public's business, will be the head of the Trade Policy Committee, which will deal with the business of every State in the Union; and the States of the Union, represented in the Senate by two Senators from each State, will be turning over to a Cabinet officer who claims the right of executive privilege a controlling position in the determination of what happens to every business in America.

CLAIM OF EXECUTIVE PRIVILEGE

What does this executive privilege claim mean? I have here the transcript of a hearing before the Judiciary Subcommittee on Constitutional Rights, on the subject of executive privilege and freedom of information. This hearing was held on May 5, 1959. Before I read from the transcript, I wish to say that the press cries out against the limitation of public knowledge with respect to public policy. The press insists that too many items of Government action are improperly classified without the authority of the President. There are complaints throughout the country against the suppression of public information with respect to what goes on in this Government, under the false claim of executive privilege. Those in the executive departments refuse to tell the newspapers and the people what their Government is doing.

I take the position that public information belongs to the people. I take the position that the Government established by the Constitution of the United States is a Government which belongs to the people; and what the Government knows the people have a right to know. When any public official claims the right of executive privilege he must be certain that he is claiming that right in the interest of national defense or of high public policy.

I do not contend that the President should be compelled to reveal private conversations with his aids. I do not contend that the Secretary of any department of Government should be compelled to release confidential information which may be gathered. But when any branch of the Government is dealing with subjects having to do with the appropriation of money, the expenditure of money, or the action by executive authority in the field which constitutionally is covered by legislative authority, there is no such thing as executive privilege.

On May 5, 1959, the Subcommittee on Constitutional Rights was hearing Mr. Leonard J. Saccio, Acting Director of the International Cooperation Administration. He was accompanied by his General Counsel, Mr. John G. Burnett, and by his Deputy General Counsel, Mr. Henry T. King. I understand that a new Director has recently been appointed, and that he has recently appeared before the House Committee on Appropriations.

In this transcript I find this statement by Mr. Saccio. He had been interrogated by the chairman of the subcommittee, the distinguished and able Senator from Missouri [Mr. Hennings], about his evaluation of the executive privilege.

I read from page 58 of the transcript. Mr. Saccio, speaking of Mr. Hollister, his predecessor, said: "He came to a very practical view as far as he was concerned; Congress should get everything except what he thought was purely personal to his own guidance and judgment."

That is executive privilege.

"This is what it amounts to as a practical question: There isn't a thing that GAO"—that is, the General Accounting Office—"does not get, except this one evaluation report.

"I am not falling back, now, on legal distinctions or principles here. I am saying, in effect, that if ICA wanted to apply the executive privilege, GAO would not see one thing, because practically every document in our agency has an opinion or a piece of advice, and runs up and back between the missions every day in the week, because you have crises to take care of; you have got problems to take care of. This is not the fact. The fact is that GAO sees practically everything except for this one report."

There is a plain and explicit declaration that the International Cooperation Administration has the right to decline to reveal to the General Accounting Office anything it pleases to decline to reveal. There was some further discussion. Mr. Saccio was interrogated by Mr. Patton, one of the attorneys for the committee. He said, in response to questions, that the auditors of the International Cooperation Administration did not get any more than GAO, and that the evaluation reports were not withheld from him.

He was asked to check that statement, and on May 11 he sent an answer to the Senator from Missouri [Mr. Hennings], from which I read this portion:

"I have now looked into this matter and find that the situation is this: A copy of each evaluation report is normally sent to our Assistant Deputy Director in charge of the Controllor Division. Our auditors, in preparing for an internal audit of a country program, are authorized to, and in fact usually do, read this copy of the evaluation report. They read these reports as one of their sources of background comment and evaluation on the ICA program in the country where the audit is to be performed. They do not use materials from evaluation reports in their audit reports or otherwise directly use the evaluation reports in carrying out their audit activities."

Here was the frank confession of Mr. Saccio that the General Accounting Office, created by Congress to look after these matters for Congress under the budget law, denied the information which the auditors themselves get.

The Senator from Nebraska [Mr. Hruska] interrogated Mr. Saccio, and some of his comment was extremely interesting. Said Senator Hruska:

"Senator HRUSKA. But the fact is that these experienced men you send out, they apply their previous experience to a given set of procedures and practices and other items which they get out of the book. It is that in which Congress is interested. If we are to be responsible for financing and sponsoring this program, we ought to know what it is doing. We ought to know what means it is employing to obtain the objectives, the general objectives to which you refer. You see, giving all of due deference and respect to ICA for being a body of experts, they have no monopoly under our form of Government in responsibility for the success and propriety of the ICA program. And when your department assumes the attitude it does, we find ourselves boxed in pretty heavily because then we have to go out and send men sometimes who are not as experienced as the men who you send out, and they come back with things which you in turn label and brand, and probably justifiably so in some instances, as being distortions and misrepresentations, and not complete stories. Now, if we are going to work toward a common end, don't you think there would be some grounds such as that which was arrived by the Army back in 1957 until the Department of Defense stepped in, don't you think there would be some grounds in which you would make available to Congress and GAO these evaluation reports for their considered and discreet consideration?"

Senator Hruska quoted from the existing law establishing GAO for the direct purpose of conducting such investigations, and he indicated the need of keeping the public informed of the public business.

Mr. CARROLL. Mr. President, does the Senator desire to continue at this point, or would he be willing to yield for a question at this time?

Mr. O'MAHONEY. I am always glad to yield for a question at any time.

Mr. CARROLL. I say to the very able senior Senator from Wyoming that this is the most important issue in this whole debate concerning the nomination of Admiral Strauss. The reason I say that because this nomination presents a challenge to the legislative branch of the Government. Are we going to permit the continued misuse of so-called executive privilege when, in fact, there is involved nothing more than executive secrecy?

This discussion of the General Accounting Office is along the line of the testimony of General Counsel Robert A. Keller before the Subcommittee on Constitutional Rights of the Committee on the Judiciary. I should like to take a minute or two to quote from his testimony. We were talking about the value of having an independent and impartial examination made of these matters.

Said Mr. Keller:

"The value of such independent examinations is illustrated by our review of Air Force procedures for determining spare aircraft engine requirements and for controlling the related procurement. In 1955, we reported to the Congress that the Air Force had substantially overprocured two series of J-47 engines still in production and that arrangements were being made for procurement of 165 additional engines of another series for the military assistance program, although excess engines of a similar series were available. This situation was taken up with the Assistant Secretary of the Air Force and as a result of our finding an order for additional J-47 engines was terminated. The Air Force estimated that savings of \$50 to \$60 millions resulted from cancellation of this order. Additional savings of \$10 millions resulted from the decision to abandon the purchase of more engines for the military assistance program.

"Another illustration was our reviews of supply management and operations in the Far East which we reported on to the Congress and responsible management officials during 1958. We found both the Signal Corps and Corps of Engineers Supply Centers failed to properly discharge their responsibilities in regard to the determination of requirements. Incorrect requirements resulted in overstating orders from the United States. As the result of our reviews, \$9 million of orders for materials were cancelled. Additionally, the deficiencies disclosed during our review of the supply operation of the Eighth U.S. Army, Korea were of such scope and significance as to adversely affect efforts to provide an economical and efficient supply operation. The major deficiencies involved the improper determination of needs, unreliable stock records, and inadequate review of orders from troop units. As a result of our examination, orders on supply centers amounting to over \$3 million were cancelled and recommendations were adopted which should assist in establishing improved controls and in preventing recurrence of the deficiencies noted.

"More recently, we reported on February 4, 1959, to the Congress that our review of the physical movement of aircraft engines in the overhaul pipeline in the Department of the Navy and comparison with performance by the Department of the Air Force on similar engines suggests that a reasonable pipeline would be approximately 150 days as contrasted with the scheduled 210 days used by the Navy for computing requirements. On this basis, we estimated that at July 31, 1958, 793 aircraft engines costing about \$68 millions are being procured in excess of the Navy's requirements. In addition, at that date, the Navy had planned requirements for 204 more of these engines estimated to cost \$33 million. We reported that the Navy, by reason of applying a very liberal allowance for out-of-service time for aircraft engines, is investing very substantial sums of money in the procurement of these aircraft engines that are excess to its needs.

"THE ACCESS TO RECORDS PROBLEM IN THE DEPARTMENT OF DEFENSE

"Obtaining access to the information and records of the Department of Defense and the military departments has been a problem which became acute during the fiscal year 1958, particularly as our audit and examination activities have required us to probe further into sensitive and highly costly programs of the major weapons systems and missiles."

Had GAO been permitted to examine the records, other savings would have accrued to the Government. They would have accrued, except that in these instant cases they did not permit a valid congressional inquiry into how much money was being spent.

I am bringing out these facts in order to carry out the point which the able Senator from Wyoming is now presenting. He says:

"Although we have made some progress with the departments in regard to access to information and records generally necessary for us to carry out our statutory responsibilities, there are three areas in which the situation has not been satisfactorily resolved. These involve:

"(1) Information contained in procurement and other operating files concerning observations, opinions, evaluations and recommendations by subordinates and other matters considered in making decisions.

"(2) Information contained in internal reviews, such as staff studies, which are the bases for supply, logistics, and financial management determinations, and

"(3) Information concerning operations and program execution developed through departmental inspections, surveys, and examinations."

I should like to say to the able Senator from Wyoming that this is the crux of the issue.

As the result of the opinion of the Attorney General in 1954, the doctrine of executive privilege is now being applied, not only by the executive branch but also by the regulatory bodies of the Government, which Congress has created. These agencies are not part of the executive department at all. Yet, under the guise of executive privilege, they try to deny certain committees of Congress the right to take a look at their records.

I believe we must meet the challenge head on, and I believe the issue is clarified here because the nominee under consideration, in my opinion, serves as a classic example of a person who stands for executive secrecy against the public interest, in purporting to exercise the doctrine of executive privilege.

Mr. O'MAHONEY. Mr. President, I thank the Senator from Colorado. I do not believe that the issue could have been more clearly stated by anyone. If the Senate should now confirm the nomination of Admiral Strauss, it will be saying to the country: "We believe in his claim of Executive privilege, even though it was made in defense of a contract which the President ordered canceled and which the Department of Justice has declared, in the Court of Claims, was an invalid contract and against the law."

Congress cannot preserve free government unless it preserves it here. If we turn over to the executive branch the right to keep secret

what they do in administering the public trust, there will be no public trust.

I was talking about the testimony of Mr. Saccio. He is a very able lawyer. It is pleasant to listen to him. However, he takes prominent part in administering the foreign aid program in some 66 countries. Congress knows nothing about the contracts before they are made. We must pass a bill to authorize foreign aid, and we must then pass appropriations to enable the American dollars to be expended.

Mr. President, in the Washington Post of yesterday I find a story by the Associated Press, written by John Averill entitled, "Report Charges Laos-Aid 'Mess.'" The article reads, in part:

"House investigators yesterday reported bribery, bumbling, and large-scale waste in U.S. aid to the southeast Asian kingdom of Laos.

"The International Operations Subcommittee under Representative Porter Hardy, Jr., Democrat of Virginia, unanimously presented these findings on the eve of House debate on President Eisenhower's plea for \$4 billion in foreign aid, including undisclosed sums for Laos.

"High State Department and aid officials took issue with the congressional report. Despite some admitted faults now being cleared up, they said, the Laos aid program has proved successful by keeping the tiny country from falling into the clutches of its Communist neighbors to the north."

Mr. President, I shall not read the entire article; I ask unanimous consent that it be printed in full at this point in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Washington Post and Times Herald, June 15, 1959]

"REPORT CHARGES LAOS AID MESS

“(By John Averill)

"House investigators yesterday reported bribery, bumbling, and large-scale waste in U.S. aid to the southeast Asian Kingdom of Laos.

"The International Operations Subcommittee under Representative Porter Hardy, Jr. (Democrat, of Virginia), unanimously presented these findings on the eve of House debate on President Eisenhower's plea for \$4 billion in foreign aid, including undisclosed sums for Laos.

"High State Department and aid officials took issue with the congressional report. Despite some admitted faults now being cleared up, they said, the Laos aid program has proved successful by keeping the tiny country from falling into the clutches of its Communist neighbors to the north.

"In fact, declared Assistant Secretary of State Walter S. Robertson, career diplomat, J. Graham Parsons, did such a fine job as Ambassador to Laos that it helped win his recent Senate-approved promotion to Assistant Secretary for the Far East to succeed the retiring Robertson.

"The blistering 51-page House report capped a 14-month inquiry into the quarter-billion dollars worth of U.S. assistance pumped into Laos since 1955. The country, smaller than Illinois-Indiana and

with a population of 2 million emerged as an independent nation in 1954 after the Indochina war. It has come under constant pressure from Communist China and North Vietnam, which border Laos for 600 miles.

"The House investigators got sworn testimony last March from Edward T. McNamara, former public works officer for the U.S. aid mission in Laos, that he accepted \$13,000 in bribes from the American-owned Universal Construction Co. in return for helping the firm get roadbuilding contracts.

"The Congressmen referred their findings to the Justice Department. Officials of the International Cooperation Administration said the last contract with Universal had been canceled pending a study on what claims the Government could make against the company.

"A key committee conclusion was that the State Department decided for political reasons to support a 25,000-man army in Laos 'despite contrary recommendations by the Joint Chiefs of Staff,' and that this in turn forced an aid program so big as to foster profiteering and set off inflation in Laos."

Mr. O'MAHONEY. Mr. President, the article illustrates the important fact that the money of the U.S. Treasury is being spent by an organization which claims the Executive privilege asserted by Admiral Strauss. So if the Senate confirms his nomination, how can Congress regain the power to know, in the interest of the public in every State of the Union, how the tax dollars are being spent?

Mr. CARROLL. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. CARROLL. Will not the able Senator from Wyoming agree with me that we do not contend that the President of the United States, under the Constitution, does not have certain discretionary power? The President certainly had implied powers to prevent disclosure under the Constitution; for example, he can privately confer with the members of his administrative staff; he can hold confidential conference with his Cabinet officers; if there was an exchange of correspondence, I think it could be safely asserted that under the Constitution Congress could not seek to invade that field, and Congress has never sought to invade it.

But when an attempt is made to delegate or to assume powers which go beyond that realm and into a regulatory body—as was the case with the Atomic Energy Commission—does not the Senator from Wyoming think there is too much stretching of the doctrine of Executive privilege?

Mr. O'MAHONEY. I certainly do. I so stated during the investigation of the Dixon-Yates contract, as will be found on pages 1161 and 1162, after Mr. Strauss has asserted his claim to executive privilege. These are the words I used at that time:

"The reason I said in closing my remarks that I do not believe there is any privilege which protects the Chairman of the Atomic Energy Commission from responding fully, frankly, and freely, to the questions asked by this committee arises from the fact that the Atomic Energy Act which established the Atomic Energy Commission was a delegation of congressional powers to the Commission which you head."

This was addressed to Admiral Strauss:

"It was not a conveyance to the President of any powers as in the case of the Department of Justice, or the Department of the Interior, or the Department of Agriculture.

"And Congress was so certain about this, that it established the Joint Committee on Atomic Energy, and gave that committee special powers to keep in touch with your Commission.

"The purpose of the Atomic Energy Act, as I recall it, and I am speaking now from memory, was to establish the closest liaison between the Congress and the Commission, so that nothing could be done without the knowledge of the peoples representatives in Congress. This was because we were dealing with a new power of nature, fissionable materials, and the great capacity for disaster and for progress.

"So this does not fall into the category of privileged communications, which found their origin when George Washington as President of the United States declined to advise the Senate with respect to the negotiations of some treaties which he carried on.

"But we have come to a period in the history of our Government where it is no longer possible for the President to carry on negotiations even with foreign governments himself. He must delegate this power.

"We have a situation in which powers are delegated by Congress to commissions, and in which Executive powers are delegated by the President.

"I remember very well objecting all through the Roosevelt administration and the Truman administration and the Eisenhower administration to the Reciprocal Trade Agreements Act which allows the President, by signing his name upon a document which other people have negotiated, to exercise the powers of Congress to levy duties, and so forth.

"I contended that those agreements should not be permitted to become effective until submitted to Congress for approval.

"Now we are in a time when because of these great complexities, it would be easily possible for men of evil intent in the Government to throw about themselves the cloak of this old protective doctrine. But because of the complexity it is more important than ever before that men of good intent in the boards and commissions which Congress has established to exercise its powers should make full and free disclosure to the people.

"I do not want to suggest that there was any evil intent upon the part of the Atomic Energy Commission, but I submit that the story which has been told here from the very beginning step by step against the most resolute resistance upon the part of our Bureau of the Budget, the Atomic Energy Commission, and the Department of Justice and everybody who is concerned in this Dixon-Yates policy—I submit, sir, that all of those facts indicate that the story has not yet been told to the Congress, and I do express the hope that the witnesses before us today will not continue to rely upon this doctrine which arose at a time when the delegated powers of Congress were not involved. They are involved here.

"And I say to you, Admiral, and I say to you, Mr. Mitchell"—Mr. Mitchell was the counsel—"in all sincerity, that in a matter of this policy every patriotic servant of the Government should come forward and say, 'This is the story.'"

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

the part of any of the executive officers concerned with it to refuse to tell the representatives of the people in Congress what was done.

Mr. CARROLL. Mr. President, at this point will the Senator from Wyoming yield?

The PRESIDING OFFICER (Mr. Curtis in the chair). Does the Senator from Wyoming yield to the Senator from Colorado?

Mr. O'MAHONEY. I yield.

Mr. CARROLL. I know the able Senator from Wyoming will clearly understand the point I have in mind: When the Congress, through its committees, exercises the power of investigation, under the Constitution, the committees have the right to call before them, to testify, members of the executive branch or officers of the independent agencies when there is a finding of special privilege or conflict of interest.

Let me digress here to say that in the very suit in which the Department of Justice is trying to defend the Government against the charge of improper cancellation of the Dixon-Yates contract, the Government's defense is predicated on conflict of interest.

What was the nature of the conflict of interest? It was as follows: A businessman from New York was formulating a gigantic financial transaction. On the one hand, he was working for the Bureau of the Budget—

Mr. O'MAHONEY. And, on the other hand, he was working for the First Boston Corp.

Mr. CARROLL. Yes; and the First Boston Corp. was trying to set up the financial arrangements. This conflict of interest is the basis of the Government's defense in the suit filed against it for canceling the contract.

The able Senator from Wyoming has talked about the Teapot Dome scandal; I am also reminded of the Idaho Power Co.'s fast-tax-writeoff case. In that case, when the congressional committee called before it witnesses from the executive agency, and asked them questions, they refused to answer; they claimed Executive privilege. The congressional committee wanted to know why they opened up that matter at that late date and why they granted the exemption, which the testimony showed might result in a tax loss of \$83 million to the people of the Nation. All the Members of Congress wanted to know what had happened; and as I understand from the senior Senator from Wyoming, that is all the congressional committee requested in this case. It was not trying to probe into the personal papers of the President of the United States; it was not trying to read his private memorandums to members of his Cabinet or other of his officers.

All we are saying here is, first that all the powers of the agencies are based upon statutory grants of power; and, second, that the independent agencies are created by the Congress, and are responsible to it, and are not parts of the executive branch.

Mr. O'MAHONEY. Furthermore, we are saying that the Senate should not advise and consent to the nomination of the man who participated in that program, by means of which the Bureau of the Budget, the Atomic Energy Commission, the Securities and Exchange Commission, and the Federal Power Commission were brought into conference in regard to ways and means to handle that matter.

Mr. President, I say to you and to my colleagues that the finger of Sherman Adams was in that case. Sherman Adams refused to appear before the congressional committee to testify. Instead, he proclaimed that he had executive privilege; and he would not consent to testify before the congressional committee.

Well, Mr. President, Sherman Adams now has departed from the scene. There were many conferences in the White House, when Sherman Adams was assistant to the President. There were conferences with Mr. Goldfine. But all that was too much for the White House to stomach.

Mr. President, I say that the action of Admiral Strauss in this case is too much for the Senate to stomach, if it wishes to defend the right of the public to know the public business.

Mr. CARROLL. Mr. President, will the Senator from Wyoming yield further to me?

The PRESIDING OFFICER (Mr. McNamara in the chair). Does the Senator from Wyoming yield to the Senator from Colorado?

Mr. O'MAHONEY. Certainly.

Mr. CARROLL. Let me say to the Senator from Wyoming that I do not know whether Sherman Adams was in the case or not.

Mr. O'MAHONEY. His finger was there.

Mr. CARROLL. But I know the record. The record is presently in the U.S. Court of Claims, where that court is finding the facts. There is not the slightest doubt in the mind of anyone that the policy in regard to the Dixon-Yates contract was formulated in the White House. The Bureau of the Budget is an arm of the President. The policy was formulated there. And there can be no doubt in the mind of anyone who reads the record that Admiral Strauss was one of the advisers of the President.

When we reduce the matter to its simplest terms, we find that the important point is as follows: When the congressional committee called Admiral Strauss before it to testify, the committee had the power to do so; it was exercising a proper legislative function and a proper legislative power. Admiral Strauss was questioned. Mr. President, in the name of commonsense, why did he not state, "This is a part of administration policy." That is admitted now; it is in the record. Why was not that fact laid on the table, instead of hiding behind executive secrecy? Or did they not want the public to know that it might cost them a million dollars?

PRESIDENT'S ORDER TO REVEAL

Mr. O'MAHONEY. Let me say that it should be made clear that the executive secrecy claimed was only pretended; there was not actually any executive secrecy, because the President of the United States, Dwight Eisenhower—as I shall presently show to the Senate—at a press conference held shortly after this matter "broke," said to all the members of the press who were assembled in the room in which he held the conference that there was no information about this whole problem he was not willing to reveal.

On the 18th of August 1954, the President replied to a question which was asked at his press conference. I do not know who asked the question; the record does not show; but the following report of

that press conference was published in the New York Times of August 19, 1954. As everyone knows, the New York Times keeps a meticulous record of what is said at the President's press conferences. In those days, reference was not made to the President by name, but the personal pronoun was used. I shall read now, in the form of an indirect discourse, what appeared in the New York Times:

"Now, as to his (the President's) actions, his own actions, he was not going to defend himself, as he had told reporters time and again he should not. He merely said this: Of course, he approved the recommendations for this action, and every single official action he took, involving the contractual relationships of the United States with anybody, and except only when the question of National security was directly involved, was open to the public."

Mr. President, I ask that particular attention be given to the words:

"Every single official action he took, involving the contractual relationships of the United States with anybody, and except only when the question of National security was directly involved, was open to the public."

That was the President's statement; and it was a proper statement. I agree completely that when the national security is actually involved, of course then the information can be classified. But the fact is that subordinates throughout the executive branch of the Government are indulging in the classification of public business matters which do not involve national security; and there was no national security in this particular case.

But let me proceed with the quotation from the President's statement. These are his words: "Any one of you present might singly or in an investigation group, go to the Bureau of the Budget, to the chief of the Atomic Energy Commission"—that, of course, was Admiral Strauss—"and get the complete record from the inception of the idea to this very minute, and it was all yours."

That was all he had to say about it. There was the declaration of the President of the United States to the representatives of the American press, and he said any one of them might go individually or in a body to the chief of the Atomic Energy Commission and every fact in this case was theirs for the asking.

After that statement, we in the Judiciary Committee asked the chief of the Atomic Energy Commission for the facts. He did not give them to us. He was not following the instructions of the President. He was defying the President.

I have no hesitation in saying that the President of the United States, whose physical condition is such that he cannot devote full time and energy to the burdensome tasks of his Office, and must depend upon aids and assistants, was depending upon these men to carry out his wishes and to be as free and frank with the public as he said he wanted them to be. But Mr. Strauss, both before the Judiciary Committee and later before the Committee on Interstate and Foreign Commerce, refused. "I shall decide," was his response, in effect.

MR. CARROLL. Mr. President, will the Senator yield?

MR. O'MAHONEY. I yield.

MR. CARROLL. What was the ground or basis of his refusal? It was executive privilege, was it not?

Mr. O'MAHONEY. Certainly.

Mr. CARROLL. What was the date on which the President issued the press release?

Mr. O'MAHONEY. August 18, 1954, almost 5 years ago. Even after that, of course, the contract continued. After that date and after the committee publicly brought out the facts to such an extent that everybody knew something was rotten, the President finally said, "We must cancel the contract," although he had ordered it entered into.

Mr. CARROLL. Mr. President, will the Senator yield further?

Mr. O'MAHONEY. Certainly.

Mr. CARROLL. In my opinion, these facts have never been brought out more clearly at any time in this debate as they have been brought out in the last 2 or 3 minutes? What do we find? We find language in the report of the Commissioner of the Court of Claims, at page 11, as follows:

"It was the basic Eisenhower administration policy on power during 1953 and 1954 that the Government would seek to have either private enterprise or local communities provide power generating sources in partnership with the Government. This policy was first announced in the President's state of the Union message of February 2, 1953."

So there was no doubt that this was a part of Eisenhower policy. There was no secret about it.

LEGISLATIVE RESULT BY EXECUTIVE ACTION

Mr. O'MAHONEY. That was perfectly proper policy for him to espouse and to urge upon the Congress; but what was done under the leadership of the nominee to be Secretary of the Department of Commerce was to try to shortcircuit the Congress and produce, by executive action, a legislative result.

Mr. CARROLL. Mr. President, will the Senator yield further?

Mr. O'MAHONEY. I yield.

Mr. CARROLL. That was an announced policy, which the public knew. On page 11 of the report, in section 23, is found a statement to the effect that, in accordance with that administrative policy, the Director of the Bureau of the Budget was moving forward. The picture becomes very clear. He was moving forward to implement the policy of the administration.

What did he have to hide? Nothing at this point. What later developed? This is the real point, and it has not been brought to the attention of the public. Here is the President of the United States saying, "Open your file. Let the newspapers, let the Congress, take a look at it." That is the President of the United States speaking. Only he can exercise the executive privilege. No one else can exercise it for him. The President said, "Open your file. Let them take a look at it." But did Admiral Strauss open his file? Strauss—not the President of the United States, not the Attorney General, but Strauss—claimed executive privilege. This is the crux of the whole issue. I do not think the President of the United States knew about it, and I do not think the Attorney General knew about it, but within the Bureau of the Budget, a new man, a man named Wenzell, from the First Boston Corp., was coming into the picture. He was financial

manager of the utilities group at the same time that he was working with the Bureau of the Budget. Strauss knew of his connections, and the record proves it. This was at the very time that committees of Congress began to inquire into this matter with the question, "Tell us more about your contract and who is working on the contract." It was at this time that Admiral Strauss claimed secrecy, executive privilege. Is that not correct?

Mr. O'MAHONEY. Yes, that is so; and it is another matter which has not been made clear in the public's mind. I want to call particular attention to this matter, because it reveals the kind of operation in which the head of the Atomic Energy Commission was engaged.

It was the intention to have a contract entered into by the Atomic Energy Commission to supply power for the TVA. The TVA said, "We do not need it; we do not want it; we handle our own affairs."

Some of the directors of the TVA made a special statement about that matter. It is in the record. If I can get my fingers on it, I shall read it, because it is important that it be known at this particular point in the Record. The TVA, which was directly affected, and whose area was to be invaded by the new generating company, did not want this to be done, and it so notified all concerned.

I am reading from page 67 of the staff report of the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, concerning the date of April 16, 1954:

"AEC Commissioners Smyth and Zuckert write to Hughes"—the Director of the Budget—"stating that ' * * * the proposed action involves the AEC in a matter remote from its responsibilities. In an awkward and unbusinesslike way, an additional Federal agency would be concerned in the power business. * * * The present proposal would create a situation whereby the AEC would be contracting for power, not one kilowatt of which would be used in connection with Commission production activities.'"

They go on to say that "such a contractual relationship" was on "matters irrelevant to the mission of the Atomic Energy Commission."

That was a clear and positive statement.

MISSISSIPPI VALLEY GENERATING CO.

The Mississippi Valley Generating Co., the operating company which got this contract, was a subsidiary. It was incorporated under the laws of Arkansas. The incorporation papers were drawn in a law office in the city of New York. The three incorporators all gave the same address, 120 Broadway, as I recall. They said that they each owned one share of stock, which was valued at \$100 a share. Then in the charter of the corporation it was stated "this corporation will begin business with a capital of \$300." That was written in the charter of the corporation, the Mississippi Valley Generating Co., and it was with that company that Mr. Strauss, the nominee to be Secretary of Commerce, was seeking to effectuate this contract.

The cost of the plant which was to be built was estimated to be from \$99 million to \$120 million; so it was necessary to raise the money somehow. How were they going to raise the money? The papers filed with the Securities and Exchange Commission, before which the presentations had to be made, because approval of the

financing plan had to be by the Securities and Exchange Commission, showed they were asking for authority to sell 55,000 shares of common stock, which would have raised \$5.5 million, but obviously that was not more than a twentieth part of the estimated cost. How were they going to raise the extra money? That is easy to answer. They were going to sell bonds to investment houses, such as the First Boston Corp., and to insurance companies. In other words, they were going to seek to acquire other people's money to build the plant for the operating company, which started business with a capital of \$300. They were going to use the money of other people.

This, Mr. President, is the way Wall Street tries to control the business of America. It makes no difference whether it is the business of the South, the business of the West, the business of the East, or the business of the Middle West. Today under the constantly merging concentration of economic power in this country, operators who have had the training and experience of Mr. Strauss, a former member of Kuhn, Loeb & Co., a New York investment house, are seeking to take control of business and industry. Mr. President, the practices of these "high binders" who seek to control the commerce and the industry of the United States have been the model upon which Jimmy Hoffa of the Teamsters Union and his predecessor have worked, in their attempt to use the Teamsters Union to control the business of the people of the United States and the business of the individual teamster.

Mr. President, I have said time and time and time again that we who sit in the Congress, whether it be the Senate or the House of Representatives, represent the masses of the people of the country; the people of every State, to whatever class they belong—farmers, workers, bankers, or businessmen. Whoever the people are, they are the ones we represent. We represent them all, and we should not take the risk of placing at the head of the Department of Commerce a man who, by his own admission, has refused to tell the people the facts they were entitled to know about the method by which this subsidiary of two holding companies was to be given a special privilege contract by the Government of the United States, with respect to which the Government would pay much of the cost and the people who innocently bought securities would pay the rest.

It is not generally known, for example—I will say to the Senator from New Mexico [Mr. ANDERSON], who rises, and who no doubt knows it—that this contract provided a bonus in the form of electric power for Messrs. Dixon and Yates, in that they would get the power at below cost to use for their own purposes. That is represented as an important business matter which should not be revealed to the Members of Congress.

Mr. ANDERSON. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield to the Senator from New Mexico.

Mr. ANDERSON. I was interested in what the Senator from Wyoming said about the fact that the organizers of this company planned to issue 55,000 shares of stock, which would have provided \$5.5 million capital. When we had the hearing with respect to the contract and questions were asked as to how this operation was to be financed, a statement was made, which the Senator from Wyoming has repeated, that they were going to start with a capital of \$300. I said "that is all

the money they need to put in." The claim was made that they were going to put in \$5½ million. I said, "would it not be possible, with a \$100 million or more contract, for the parent company to let the contract to the Mississippi Valley Generating Co. on a cost-plus-10-percent basis, and thereby get 10 percent of \$100 million or more, or \$10 million, and pay a 52-percent corporation tax on it, and have left the \$5 million to use to pay for the stock?" They said it was possible, but "who would think of that?" I said "I thought of it." Many others also thought of it. In my opinion, it was the way in which it was going to be financed.

Mr. O'MAHONEY. The Senator is very correct.

On the 17th of December 1954, I had just returned to the Senate after a leave of absence, having been granted leave in the election of 1952, when Dwight D. Eisenhower swept the State of Wyoming. I came back in the election of November 1954. It did not take me long to see what was going on. So on December 17 that year I wrote a letter to the Honorable R. H. Demmler, the Chairman of the Securities and Exchange Commission, in which I said:

"DEAR MR. DEMMLER: May I first express my appreciation for the promptness with which Secretary DuBois of the Commission has responded to my request for copies of the articles of incorporation of the Mississippi Valley Generating Co. and of the notice issued by him of the hearing now being held by the Commission under the Public Utility Holding Company Act of 1935 in the matter of the Mississippi Valley Generating Co., Middle South Utilities, Inc., and the Southern Co.

"These documents disclose certain facts which I have not heretofore seen in the public press, and which prompt certain questions with respect to what is popularly called the Dixon-Yates controversy.

"First of all, it is clear, from the charter and the notice of the hearing the Securities and Exchange Commission is now holding, that the Mississippi Valley Generating Co. appears to be grossly undercapitalized. Its proposed capitalization of \$5,500,000 is scarcely one-twentieth part of the estimated cost of the new plant. The transaction has been represented to the public as the substitution of private enterprise for public power, but it is clear that the Atomic Energy Commission has actually entered into a contract with what to all intents and purposes was a nonexistent corporation when the proposal of Messrs. Dixon and Yates was accepted by the Government.

"The articles of incorporation were executed on July 16, 1954, under the laws of the State of Arkansas. The incorporators, three in number, were residents of New York City, each of whom gives his address as 120 Broadway, New York 5, N.Y. They acknowledged the articles before a notary public of Queens County, N.Y. Each of them is represented in the articles as having subscribed to one share of stock. The par value of these three shares account for the fact that article 7 of the charter asserts that the corporation will begin business with a capital of \$300"—and so forth.

WHITE HOUSE CONFERENCES

Notwithstanding this clear revelation of what the facts were, conferences were being held in the White House—without the knowledge of the President, I am sure—with Sherman Adams pointing the finger.

It was acknowledged by the witnesses that they came, and that the conferences were held there.

In those conferences, first, there was Mr. Demmler, head of the Securities and Exchange Commission; later there was Mr. Armstrong, who succeeded him when Demmler resigned. I have often thought that Demmler resigned because things were becoming too hot. He did not like the stench which arose from this sort of messy financing. In any event, the discussion was the kind of representation should be made when the hearings came up in order to get the approval of the SEC. That explains why the Chairman of the Atomic Energy Commission, who was not trying to get the power for the Atomic Energy Commission at all, but to serve the TVA territory, refused to tell the facts, even though the President, finally seeing what was going on, told a press conference that the facts ought to be laid before the public. But finally this high financing issue of using other people's money to carry out a private deal was approved. The decision was immediately appealed by the opponents of the project.

Finally, when the mayor of Memphis, Tenn., said he believed in municipal ownership of public utilities, the President seized that as a great opportunity to call the whole thing off, and he wrote to the head of the Atomic Energy Commission and said, "Cancel the contract."

It never was a public contract at any time. It was a privately negotiated plan for the benefit of the insiders in the utility field and in the public investment field. I do not imply that any Government official was involved in this scheme, but it was the ordinary sort of action to which Wall Street has been accustomed all through the years.

When I was holding hearings for the TNEC years ago, there was a long investigation of the concentration of economic power. One of the things we looked into was the manner in which the floating of private securities was conducted. There appeared before the committee representatives of all the investment houses, or almost all the investment houses. It was made clear from their evidence that there was no such thing as real competition among investment houses in the floating of securities. They had private friends. They acknowledged that if one group of investment bankers ever did business with a particular corporation, that group should be permitted to continue, without regard to competition. Mr. Strauss was a member of that profession. He was a witness.

Later, as a result of the facts which were developed in those hearings, the Department of Justice brought an antitrust suit against certain investment bankers in New York, charging lack of competition, and violation of the antitrust laws. The case was a difficult one to try. It required months to try, before Judge Medina in New York. He finally dismissed the case. By that time the present administration was in power, and the former Attorney General, Mr. Brownell, chose not to appeal the case to a higher court.

The question involved there was, Shall we have open competition in the investment banking field, or shall we have a sort of agreed pattern of arrangements by which special interests can be served? Special interests were served, so far as the Mississippi Valley Generating Co. was concerned. That was not a corporation of people. It was a subsidiary corporation of two holding companies. That was a clear

representation of the methods used by those who are accustomed to the high finance of Wall Street. I have no hesitation in saying that, in my opinion, the U.S. Senate should not place at the head of the Department of Commerce a man who has had such training and experience.

Mr. MCGEE. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I am happy to yield to my colleague.

Mr. MCGEE. Do I correctly understand the Senator to say now to any who will listen that the real issue is the issue of the public's right to know?

Mr. O'MAHONEY. Precisely. The issue is the issue of the public's right to know.

Mr. MCGEE. In our system of checks and balances, is there any one man in the system of government who knows it all, and who is above checks and counterchecks?

Mr. O'MAHONEY. The Constitution provides for a separation of powers. The words "separation of powers" have been repeatedly used by Admiral Strauss in his testimony before our committee. The Constitution separates the powers. The executive power is one; the judicial power is another; the legislative power is a third. But in the minds of the framers of the Constitution, the legislative power was first, because the legislative power represented the right of the people to make the laws. That was the first article of the Constitution.

The President was authorized to check the Congress when he was given the veto power, but the Congress was given the right to check the President when the Congress was given the right to pass a bill over a Presidential veto by a two-thirds vote. George Washington, in his Farewell Address, urged all his followers, all those who succeeded him in office, to be sure to maintain these checks and balances.

The Court cannot make the law. The Court may interpret the law, but it cannot legislate. Only the Congress can legislate. The President has the right to nominate certain officers—only the right to nominate.

Presidential nominees, in the cases mentioned in the Constitution, cannot be appointed until the Senate gives its advice and consent. Under the Constitution, Congress may give the President alone the right to appoint inferior officers. We are not dealing with an inferior. We are dealing with an officer of major importance and power, the head of the Department of Commerce. The President may not do more than nominate him under the Constitution. All the talk, in editorial columns and over the radio, to the effect that the President ought to be able to name his own Cabinet, is mere nonsensical chatter by people who have not read the Constitution for years, and who do not know how important it was in the minds of the framers of that document that the people of the country should be protected from any one branch of the Government taking over one of the other branches. An attempt is now being made by some in the executive branch of the Government to take over the legislative power.

Mr. MCGEE. Mr. President, I wish to compliment the senior Senator from Wyoming for showing in such detail and in such a carefully reasoned way how the nominee, Lewis L. Strauss, rejects this whole concept, and did so during the Dixon-Yates controversy.

However, I believe that the most important contribution the Senior Senator from Wyoming has made today has been his suggestion that this man, Lewis L. Strauss, still believes his attitude is correct, that he did not learn the true concept during the past years, and that he still believes in his concept, in spite of the fact that it was called into question time and time again before our committee in the hearings on the nominee's philosophy with respect to the executive branch and the executive powers. He still has not changed his concept. He was asked what he thought about the advice from the Attorney General. I should say that the senior Senator from Wyoming first raised that question in 1954 during the Dixon-Yates controversy.

I now read from the record of the hearings on April 30, 1959, at page 338. Mr. Strauss replied that he still felt that he himself should be the judge, above the Attorney General of the United States, on whether it was proper for him to exercise either executive privilege or to operate in a way to protect the division of authority under the separation of powers. When that question was repeated to Mr. Strauss:

"Is it still your position?" Mr. Strauss replied: "That is true. I still believe the things I was taught as a boy and as a young man are fundamental."

May I say, Mr. President, that this is no time for a boy's judgment on executive privilege and the separation of powers in our Government?

The senior Senator from Wyoming today has rightfully alerted us to the seriousness of this charge. Mr. Strauss not only shows his disregard for an opinion of the Attorney General of the United States, but he even disregards the statement made by the President of the United States that all available evidence should be given. The senior Senator from Wyoming has again, very carefully and very astutely, related that the President of the United States had said, in regard to the Dixon-Yates contract, "Tell all; get the complete record from the very day it was proposed down to the present moment," or when it was in controversy. What did Mr. Strauss have to say about that?

At the time he disregarded it; and we could even make allowance for an error of judgment on his part. However, we asked him again in committee, on April 30, 1959, while his nomination was pending for confirmation as Secretary of Commerce, and he said: "I do not personally interpret it as a waiver to me to repeat a conversation with the President."

There he injects a completely extraneous matter. He speaks about a conversation with the President. What we in the committee were worried about was that even after President Eisenhower ordered Government officials to tell all, they still did not tell all.

Mr. O'MAHONEY. The Senator from Pennsylvania [Mr. SCOTT] raised that question earlier in the day when I alluded to the position that Admiral Strauss has taken as to whether any public officer in the Nation should have the right, regardless of the opinion of the Attorney General or any other lawyer, to use his own interpretation with respect to what executive privilege was. I told the Senator from Pennsylvania, and I now repeat that this is an altogether singular case, because we are dealing here with matters which concern an invalid contract, a contract which was obviously invalid, a contract which was

declared by the Justice Department to be invalid. I have no hesitation in saying that never in the history of the United States can any executive privilege of this kind be shown. There is no precedent for the claim that the nominee now makes. If his nomination should be confirmed by the Senate, he will go into Government as the head of the Department of Commerce feeling that the Senate of the United States has approved his stand, taken after the President of the United States had ordered him to cancel the contract.

Mr. McGEE. That is correct.

Mr. O'MAHONEY. It is an utterly false claim which the former chief of the Atomic Energy Commission and now the nominee for Secretary of Commerce has been making.

Mr. McGEE. This is also of interest, because during these hearings I asked Mr. Strauss, in view of his admitted disregard of the President's order at his press conference, "What would the President, or should the President, have said that in your mind would have given you a waiver or the immunity or the right to stand on executive privilege?" I asked him what should the President have said to him.

Mr. Strauss replied: "Senator McGee, surely you don't ask me to put words in the President's mouth as to what he should have said?" There again is his attempt to evade a straightforward answer when we were trying to find out what would guide him in revealing information necessary for Congress to have. I shall not take the time now to read the colloquy, which shows Mr. Strauss' attempt to dodge around the answer to that question.

Finally, I had to say: "So your answer is what?"

Admiral Strauss' reply was: "Pardon?"

"Senator McGEE. Your answer, then, to the point of the question here is what?"

"Admiral STRAUSS. I am sorry. Would you mind; the question is not clear to me, Senator."

Even taking that literally, if the question was not clear to him, this man clearly has no concept of the philosophy of the separation of powers. He has disregarded the statement of his own President. Finally, it was pointed out that that was an invalid contract. What does Mr. Strauss say about it? He said, in our hearings—not in the hearings of the subcommittee on the Dixon-Yates contract, but in the hearings this spring before the Committee on Interstate and Foreign Commerce—and this can be found on pages 328 and 329 of the hearings: "Yes; I thought it was a good contract, and I still do, Senator."

The chairman of our committee could not quite believe the directness of that response, and he asked: "Do you think that contract still is a good contract?"

Mr. Strauss replied: "It has been terminated, but it was to provide power"—and so on.

Mr. O'MAHONEY. I thank the Senator very much for his contribution to the discussion. I want the record to be clear that my opposition to the confirmation of the nomination of Admiral Strauss to be Secretary of Commerce has no relation to the controversy of public power versus private power.

Mr. McGEE. I think the Senator has made that very clear.

Mr. O'MAHONEY. My deep concern about this matter is that if a man who makes an unfounded claim, so as to deny to the people and

their representatives salient facts which have no relation to national defense and the public business, is placed, by the advice and consent of the Senate, at the head of the Department of Commerce, which has jurisdiction over all the commerce, industry, and business of America, domestic and international, we shall be jeopardizing all who are engaged in business, in commerce, and in industry, and causing a continuation of the programs and beliefs which he has asserted, and shall be enabling him to use his own judgment about keeping secret anything which it pleases him not to divulge.

Mr. MCGEE. That is the point we should not forget this afternoon. He has reiterated these elements of his philosophy as recently as last month. He has continued to say that he would stand above the Attorney General's opinion; that he would disregard the President's order to make information available; and that he still stands by a contract which the President himself ordered withdrawn. He is defying the other branches of the Government.

That is why I hope we remember that now—today—he stands condemned for his philosophy of government, not 4 years ago or at some other time in the dark past. I am glad the senior Senator from Wyoming has brought to the peak the basic reason why the Senate should reject the nomination of Lewis L. Strauss.

I am sorry there are those who seek now to delay a vote on the nomination of Mr. Strauss. That was made clear for us today on the other side of the aisle. They do not want to vote on Thursday. It is time, it seems to me, to bring this matter into sharp focus, and to let every Senator make up his mind and cast his vote accordingly.

Mr. CARROLL. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield the floor.

Mr. CARROLL. The able Senator from Wyoming has performed a very signal service today. This is not really the issue of Admiral Strauss, personally. I have never met the man. I have looked into his record of public service. Many times I have had qualms about opposing him as I have considered his years of service. He is an intelligent man; he is a competent man. I think of his age. I think of his family. I could be swayed very easily toward him.

But there is an issue which, in my opinion, transcends Admiral Strauss. It is a simple issue. Admiral Strauss will be with us for a while; and then he will pass on. But if we approve him something will have happened to the legislative arm of the Government which will affect us for a great many years.

I speak as a junior Member of the Senate; but I have observed its operations for many years. I have had experience in the other body. We in Congress can ill afford to let our legislative powers slip through our fingers through the years. If we confirm the nomination of Mr. Strauss, we shall be delegating our power to the executive branch at a time when the people are demanding that we take hold of the reins and see where their money is being spent and what is being done with it. If we are not careful, we shall be delegating our power to the executive branch.

Mr. O'MAHONEY. I am glad the Senator from Colorado has made this comment. I want to say for the Record, to those who sit in the galleries, and to the press corps: Never forget the fact that the United States has gone through two great world wars, and that during those

wars governments have been changed. Great governments and great empires have disappeared from the family of nations. We are moving into a new scientific era, the results of which nobody can predict. History is the account of the decline and fall of nations and empires, and of the emergence of new nations and empires.

I believe firmly in the Government which was established by the framers of our Constitution—a government of the people. But our Government is not immune to change. It can die, it can fall, as other governments and empires have fallen in the past. There is that danger now.

Everyone who has read a modicum of history knows that unsound financial policy has wrecked many a government; that inflation has destroyed nation after nation. We know now, from the statements of the Secretary of the Treasury and of the President, that we do not raise by taxation or by any other form of revenue sufficient money with which to carry on the program for which the President has asked. Much of this program is for the defense of other nations. It is called mutual security. But I have yet to see any evidence of a desire upon the part of many of the countries to which our largess is going, to provide defense for us.

We have been carrying the burden of the cost of the United Nations. I am for the United Nations.

We have been carrying the burden of the cost of military aid. We have been carrying the burden of the cost of economic aid, but the countries to which we have been sending military aid and economic aid have not been responding in kind.

The International Cooperation Administration reported recently that as of December 31, 1957, it had on hand in foreign currency—soft currency—the equivalent of 2,500 million American dollars. That is soft currency which we cannot spend. We cannot use it to pay interest on the national debt, which is increasing. We cannot even use the soft currencies in the countries which issue them, without the consent of those countries, because to do so would induce inflation there.

The United States has spent approximately \$30 billion on foreign-aid programs; yet secrecy is maintained about the kind and character of the contracts, and Congress is not permitted to know what the contracts are until after the commitments have been made. This means that our own U.S. dollar is being weakened.

We have heard many of the critics of those who have stood for popular government and for Federal expenditures for the aid of distressed areas in the United States talk about the declining value of the dollar, when they thought they were criticizing a Democratic Congress. But we do not hear them criticizing the accumulation of soft currencies. If that continues, if secrecy is maintained in the executive branch of the Government, secrecy of the pattern which is exemplified by Admiral Strauss, then we shall be on the road to bankruptcy; and bankruptcy will destroy free government. If we are to defend free government in the world, we must defend it here at home. The essence of free government is that the people shall know the public business which is carried on in the interest of the people.

Mr. CARROLL. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

MR. CARROLL. What the Senator from Wyoming has said expresses what the junior Senator from Colorado sought earlier to express. It seems to me the issue is so simple that no Member of the Senate can fail to understand that the real issue involved is not personal. This is not anything against an individual who may become Secretary of Commerce. It is a question of what that individual thinks and what he stand for with respect to the separation of powers.

For example, as the senior Senator from Wyoming has pointed out, the nomination of Mr. Strauss affects the power of Congress as representatives of the people to investigate. This is vital to us. As the Senator from Wyoming has said, if we simply keep whittling away at our powers, if we delegate our powers to the Executive, letting them drift away, we will be appropriating money but not being able to follow through to see how it is spent. This is a matter which is of vital importance.

I do not know Mr. Strauss. I would not know him, to use an old expression, from a ton of coal. I never met him. But I am interested in what he says.

There is a very important point which has not been brought out. Title II of the United States Code, section 192, relates to the refusal of a witness to testify. Most of such witnesses do not know that they can be put in jail. Nevertheless, it is claimed by some that although this obligation applies to private persons, it does not apply to members of the executive branch.

However that may be, Mr. President, there are other ways for the Congress to handle such matters. Such persons can be brought before the bar of the Senate—although that procedure has not been used for some time. But they can be brought before the bar of the Senate; the Senate does not have to have them brought into court.

Mr. President, what we must bear in mind is that today, under an opinion of the Attorney General, the independent commissions and agencies, which Congress itself created, are maintaining that if they act "in their executive capacity"—and, Mr. President, mind you, they are not parts of the executive branch—they do not have to reveal their files to the Congress, the body which created them. That is why the nomination of Admiral Strauss brings before us a basic issue.

As the distinguished Senator from Wyoming has pointed out, a new subcommittee of the Senate Judiciary Committee is looking into this question. Over a period of some years the Congress has been compiling information about this issue, because the Members of Congress are concerned about secrecy in government. Because of that situation, Senator Hennings' Subcommittee on Constitutional Rights of the Judiciary Committee—and I am a member of the subcommittee—has been going into this field. Various congressional committees have been making reports, in regard to this matter, but thus far no congressional action regarding it has been taken.

Mr. President, let me state what has influenced my thinking in regard to the question of confirmation of the nomination of Admiral Strauss. The distinguished Senator from Wyoming [Mr. O'Mahoney] said to Admiral Strauss, "All we ask you to do, when there is fraud"—and I quote the substance of his statement—"or when there is undue interest or conflict of interest is to tell us what the facts are."

But Admiral Strauss refused to do so; and then he said, "If I am wrong, I will pay the penalty."

Mr. President, so far as I am concerned, Admiral Strauss is wrong; and he is going to pay the penalty; and this is one of the penalties which he has forced us to impose upon him.

If Government officers or officials who are subject to the advice-and-consent power of the Senate violate the constitutional provisions in connection with the separation of powers, this is one way to make them pay the penalty. We do not have to bring them before the bar of the Senate; we do not have to impose upon them the provisions of title 2 of the code. This is one way for us to proceed.

Permit me to state something else which influenced my thinking in regard to the pending question. I did not understand its full import until I listened to what the able Senator from Wyoming has told the Senate today. The President of the United States, in a press conference, called upon his adviser—and Strauss was the President's adviser, even though he was also Chairman of the Atomic Energy Commission—to "Open up your files. Tell them about this matter."

The President was not afraid to give the information. But Admiral Strauss refused to do so.

In that instance, Admiral Strauss insisted on being his own lawyer. Would he listen to the Attorney General, the legal adviser of the President of the United States? No.

The Senator from Tennessee [Mr. Kefauver] said that the Attorney General refused to back up Mr. Armstrong, and stated that he did not have a privilege, and should not claim it. But Admiral Strauss replied: "If I am advised by the Attorney General that I have no privilege, I might still feel that my construction of the Constitution was one by which I should abide. But I have not received any such instruction."

That reminds me of an old political boss in New Jersey, who said, "I am the law."

Strauss says, "I am the Constitution"; he insists even though a servant of the President that he will interpret the Constitution, and that he will not be controlled by the view of the President or by the view of the Attorney General.

Mr. O'MAHONEY. Mr. President, will the Senator from Colorado yield?

Mr. CARROLL. Mr. President, the Senator from Wyoming has the floor.

Mr. O'MAHONEY. No, Mr. President; I yielded to the Senator from Colorado. Will he yield to me?

The PRESIDING OFFICER (Mr. Keating in the chair). Does the Senator from Colorado yield to the Senator from Wyoming?

Mr. CARROLL. I yield.

Mr. O'MAHONEY. Once there was a man; Louis—Louis XIV—who said, "I am the state." Now we have a Lewis, who says "I am the law."

SENATOR WINSTON L. PROUTY

SEPTEMBER 2, 1960.

DEAR SENATOR: Please excuse the delay in replying to your inquiry with respect to the withholding of information from the Congress.

I have served in the House and Senate during only two administrations and in that period of time I have encountered no difficulty obtaining data to which Members of Congress are entitled.

With best wishes, I am,

Sincerely yours,

WINSTON L. PROUTY,
U.S. Senator.

SENATOR A. WILLIS ROBERTSON

AUGUST 26, 1960.

DEAR MR. CHAIRMAN: Replying to your inquiry concerning my experience as chairman of the Banking and Currency Committee in requesting information that was denied by some office of the executive department will say that I have never requested any information that was not furnished.

In connection with an amendment which I drafted last year on this subject for inclusion in the foreign aid bill, I examined all of the existing authorities touching on the right of the President to withhold information requested by the Congress or some authorized committee thereof. The exact point has never been decided by the Supreme Court. It involves, of course, an overlapping of sovereignty which the framers of the Constitution thought should be amicably adjusted between two equal and coordinated branches of the Government whenever the issue might arise.

You will recall, therefore, that in view of the decision I reached that while the Congress had the constitutional right of the purse which carried with it the right to know how appropriated funds had been expended, Congress did not have the power to compel the President to do any specific act and, therefore, my amendment was framed in a way that would require the President, and that included of course all branches of the executive department, to furnish requested information unless the President certified it would be against the public interest to do so.

With best wishes, I am,

Sincerely yours,

A. WILLIS ROBERTSON.

SENATOR LEVERETT SALTONSTALL

MAY 9, 1960.

DEAR TOM: I have your letter of May 3 regarding the work of the Subcommittee on Constitutional Rights with relation to the withholding of information by executive departments.

To the best of my knowledge and memory, I have no recollection of any such information being held up on any subject of the Armed Services Committee or Appropriations Committee in the last year.

The only instance that I recall is the one of the so-called Gaither report and this happened several years ago.

Best regards.

Sincerely,

LEVERETT SALTONSTALL, *U.S. Senator.*

SENATOR HUGH SCOTT

MAY 6, 1960.

DEAR TOM: I know of no instance where information lawfully available to a congressional committee or subcommittee has been withheld by executive departments or administrative agencies.

My last experience with secrecy of this sort occurred in 1944.

Sincerely,

HUGH SCOTT.

SENATOR JOHN SPARKMAN

MAY 11, 1960.

DEAR TOM: In reply to your recent letter I am pleased to advise you that the Subcommittee on Housing has received complete cooperation from agencies in the executive branch of the Federal Government. I am not aware of any instance where information required by the subcommittee has been denied by an executive agency.

With kind regards, I am,

Sincerely,

JOHN SPARKMAN.

SENATOR STUART SYMINGTON

MAY 21, 1960.

DEAR SENATOR HENNINGS: In view of Senator Symington's absence from the city at this time, I am acknowledging your recent inquiry re instances in which information has been withheld from the Congress.

The only recent instance of that sort which occurs to me is the refusal to furnish Senator Symington's Space Subcommittee information about the Space Council, which had been established by legislative action of the Congress. The reference is identified in the enclosed report, beginning on page 15. The more detailed evidence is available in the hearings of the subcommittee (March 24-May 7, 1959).

Sincerely,

E. C. WELSH,

Legislative Assistant to Senator Symington.

(Following is an excerpt from S. Rept. No. 806, 86th Cong., "Governmental Organization for Space Activities," a report of the Senate Committee on Aeronautical and Space Sciences, made by its Subcommittee on Governmental Organization for Space Activities, wherein is discussed at pp. 15-17 the withholding of information described above.)

FINDINGS

The findings of the subcommittee are based upon 747 pages of printed hearings as well as additional supporting material.

II. THE SPACE COUNCIL AND THE COMPREHENSIVE PROGRAM

6. Activities of the National Aeronautics and Space Council are considered confidential by the President. He has directed that the work of the Council comes within the scope of Executive privilege. Congress, therefore, has difficulty in obtaining information concerning overall space policies, plans, programs, and accomplishments.

Dr. Glennan was questioned at some length concerning the operations of the Space Council.

"Mr. SMITH. Could you tell us what the procedure is whereby the Space Council reviews these programs once they reach the Space Council level?

"Dr. GLENNAN. As I said, Mr. Counsel, I think the activities of the Space Council, being advisory to the President, are confidential in nature, and I think the constitutional situation of separation of powers is pertinent.

"Mr. SMITH. There is no way that Congress can find out then what the decision is that is reached once these two programs reach the Council level?

"Dr. GLENNAN. The final decision, of course, is the President's decision, and this is evidenced, it seems to me, by the approved budget which he sends to Congress.

"Each agency then defends its request to substantiate it (p. 14).

* * * * *

"Senator SMITH. Mr. Chairman, may I ask a question? I am troubled by all this, and I would like to ask this question: It seems to me that counsel has been asking some very pertinent and very reasonable questions. My question is, are we not receiving answers as a committee because this is an open session? In other words, could you answer the questions if the committee was in closed session or could you not answer them at all (p. 31)?

"Dr. GLENNAN. I think, Senator Smith, I couldn't answer them at all.

"Senator SMITH. Then, Mr. Chairman, it seems to be rather useless to sit here and listen to questions that are not going to be answered (p. 32).

* * * * *

"Senator DODD. What is the theory, is it secret information or is it the privilege of the President?

"Dr. GLENNAN. It is the privilege of the President.

"Senator DODD. It is not classified information?

"Dr. GLENNAN. No.

"Senator DODD. It does not affect the security of the country?

"Dr. GLENNAN. No, sir (p. 32).

* * * * * *

"Senator YOUNG. Now, are you willing to try to have that privilege removed by request so that you may answer those questions?

"Dr. GLENNAN. I would certainly discuss it with the Executive Office of the President, surely (p. 33)."

The letter from Dr. Glennan to the chairman (April 7, 1959) contained the following statement:

"I have consulted with the President on the question and he has told me that he must maintain his previous position. The President restated his view that in order to provide for the full effectiveness of the Space Council members in carrying out their advisory responsibilities to him as set forth in the National Aeronautics and Space Act, it was necessary that the activities of the Council be considered confidential to the Chief Executive (p. 106).

* * * * * *

"Senator DODD. * * * I am trying to find out whether this advisory space council makes decisions and if you actually carry them out in cooperation with the Department of Defense.

"Now if this is all, and if I am right in my understanding, then we have a real problem, one which I am sure you recognize, because, as Senator Symington just pointed out, we do operate under a system of checks and balances.

"Dr. GLENNAN. Yes.

"Senator DODD. And I suppose that we are checkers today. How are we going to check if we do not know what the program is?

"Dr. GLENNAN. * * * The question of whether or not I can discuss the activities of the Space Council, really does not prevent you from getting knowledge of the program, it seems to me—

"Senator DODD. Well, may I say as an observation, that may be true, but does it not make our task much more difficult (p. 39)?

* * * * * *

"Senator SYMINGTON. * * * You have indicated that Space Council matters are considered privileged. * * *

"Are the mechanics of organization and the procedures of the Space Council privileged or is it just the contents of specific discussions which are privileged?

"Dr. GLENNAN. Mr. Symington, my understanding of this matter of privilege is that the matters on which advice is asked and given, and the details of that advice would be within the privilege. That is the type of material which would be privileged. * * *

"I think that with respect to the Nation's program in space, as set up in the law, there are two elements of this program, one, military, and one, civilian. There is nothing about the civilian end of this that I cannot tell you. I will tell you everything that you want to know.

"I would say the same must be true of the military, although I would presume there may be other matters of security with which you would speak with them in some instances in executive session.

"Now, with respect to what you would draw from that as to what actually went on in the Space Council, I couldn't say (pp. 53-54).

* * * * *

"Senator CASE. * * * In other words we must, by inference from the fact that things have been carried out, assume they have been advised by the agency. Where advice has not been acted upon or action taken contrary to the advice, we may not know that fact or what the advice was. That is about the substance of it?

"Dr. GLENNAN. That is correct (p. 64)."

SENATOR HERMAN E. TALMADGE

MAY 17, 1960.

DEAR SENATOR HENNINGS: Thank you for your recent letter regarding the activities of the Senate Judiciary Subcommittee on Constitutional Rights in instances where executive departments and administrative agencies have withheld information from various legislative committees.

I appreciate your bringing this information to my attention and would like to be of help in any way possible. However, I know of no instances where information has been withheld from any committee of which I am a member.

With kindest personal regards, I am,

Sincerely,

HERMAN.

SENATOR STROM THURMOND

AUGUST 1, 1960.

DEAR TOM: In reply to your recent inquiry, this is to advise that I have no incidents to report regarding the withholding of information by the executive departments and administrative agencies.

With kindest personal regards,

Sincerely,

STROM THURMOND.

SENATOR HARRISON A. WILLIAMS, JR.

SEPTEMBER 8, 1960.

DEAR SENATOR HENNINGS: In response to your recent inquiry regarding the withholding of information from Congress by the executive departments and administrative agencies, I must respond that in my two sessions in the Senate, neither my office nor I have encountered such withholding.

With all good wishes to you for the continuing success of the Senate Subcommittee on Constitutional Rights.

Sincerely yours,

HARRISON A. WILLIAMS, JR.

