

H.R. 5012, like H.R. 2767 in the 85th Congress, can result in a valid enactment only if it leaves undisturbed the inherent authority of the executive branch to govern the disclosure and nondisclosure of its records.

In sum, Mr. Chairman, we believe that H.R. 5012 is unwise in that it seeks to resolve a terribly complex problem in a too simple way that does not recognize the complexities involved. Further, to the extent that the bill would seek to shift to the judicial branch a constitutional prerogative of the Executive, we believe it would be unconstitutional.

Again, Mr. Chairman, I thank the chairman and the subcommittee for this opportunity to appear.

Mr. MOSS. Thank you, Mr. Schlei.

Mr. Monagan.

Mr. MONAGAN. Thank you, Mr. Chairman.

I find some difficulty in this position, viewed from the point of view of a legislative committee and in the light of the experience that I have had and I know other members of the committee have had in attempting to get information from the executive branch.

The difficulty with this position is that it seems to me to leave the standard entirely within the executive branch, which is in a sense saying that the executive branch could never err, could never have a faulty or illegal basis, let's say, for withholding information.

I have seen examples in which a congressional committee, in the pursuit of its legitimate activities with relation to the foreign aid program, has sought to get information from the executive branch and has been met by the assertion of executive privilege.

This has been made in different situations. I will not go into the varieties now. Some of them are more complicated and more difficult than others.

But even in a case in which there was an executive session and a confidential situation where the disclosure would only be to the committee itself, we have been met by a refusal.

And, as a practical matter, even though a committee may throw its weight around, may have conferences, and so forth, about the only thing you can do about it if you are left with the standard that you propose is to bring somebody before the Congress and charge him with contempt of Congress. And that is a very extreme and impractical method of procedure.

So that I am suggesting to you that you are not permitting us to take any halfway step or to move at all in the direction of setting up some standard whereby this information could be judged and the validity of the request could be determined.

Mr. SCHLEI. Congressman, let me begin answering your question by saying that I would not deny that there are examples of abuse in this area. It is obvious; it is clear. This committee has brought out many such examples in its operations.

However, I would suggest, as you perhaps indicated, that there are lots of ways for this committee and for the legislative branch generally to exert pressure on the executive when the executive interprets—

Mr. MONAGAN. I have not suggested that any of them would be effective, though. I do not believe that they would.