

I do not think the Court has ever tried to put aside any legislator's election or to void any acts of a legislator. It has never gotten into the qualifications of a particular legislator to sit.

Mr. MOSS. I raised that because I doubt if these are immutable facts. The courts do from time to time change their opinion as to the authority of the courts.

Mr. SCHLEI. Well, that is true, Mr. Chairman. I certainly hope they do not try to do anything about the principle of separation of powers, which I would consider a cornerstone of our whole system of government, one of its most basic principles.

Mr. MOSS. I think right in the area in which your testimony is directed today that we would be able to put specific citations in the record where the Court has asserted an authority to determine whether information would be made available or would not. So that this is not a clean slate that we are going to start writing on today. This is one where there is some record.

Mr. SCHLEI. Of course there is, sir.

Mr. MOSS. And it tends to support your views on occasion and the views inherent in my legislative proposal on other occasions.

Thank you, Mr. Monagan.

Mr. MONAGAN. Well, I agree with the chairman. My period of intimate acquaintance with constitutional law was about 1937, and I must say that there is quite a difference in the adjudications of the Court today and what was considered to be the legitimate bounds of constitutional law in those days. But that is a different war. I do not think we can get into that at this time.

But just to take one specific instance. You spoke about the force of public opinion. Well, the case that I have in mind was a situation in which a subcommittee was interviewing witnesses from the executive branch in an executive session, and, importantly, there was no confidential matter involved in the sense of being a security situation, something that should not be disclosed to the public. At the same time, there was refusal in that instance to make the information available, with the committee stating that it would not be made public but would be used only by the committee.

Now, as a practical matter, there is no way that you can cope with that situation. Theoretically, yes, you could go through the process of finding the witness in contempt and then bringing him before the bar of the House. But—

Mr. SCHLEI. Congressman, may I ask whether that was not in the previous administration, the Eisenhower administration?

Mr. MONAGAN. No, because this was in—well, I cannot give you the date. It was this subcommittee, and while Mr. Hardy was chairman of the subcommittee, so it was about 1960 I would say.

Mr. SCHLEI. Well, I recall, Congressman, that when the Kennedy administration took office there was a pending controversy with the Eisenhower administration over AID records, and I think the Comptroller General was involved in the controversy in some way.

I did not personally participate in the resolution of that, but I understood that it was compromised in some way, and it has not since arisen again.

Mr. MONAGAN. I would not say that it was resolved on the side of making the information available. It was resolved on the side of not taking any further steps.