

Mr. Moss. Now, we could do it this way: We could amend the Constitution, if we could get the concurrence of the legislatures of three-quarters of our States, without the need of the President to express approval or disapproval.

Mr. SCHLEI. That is right, sir. There is no veto power on a constitutional amendment.

Mr. Moss. We could say the President has no inherent powers, that his are specifically set forth in this document, and that is all they are, could we not?

Mr. SCHLEI. Yes, sir.

Mr. Moss. We do not want to do that. That would be rather extreme.

Mr. SCHLEI. I should think so.

Mr. Moss. We could probably in our appropriations say that the funds we appropriate cannot be used to maintain any records that are not available to the public, that we are not going to make these taxpayers pay for something they cannot see. We could do that.

Mr. SCHLEI. Yes, sir.

Mr. Moss. That would be extreme, disruptive of orderly government.

So we are not trying to get at Executive privilege. This is the area where Congress and the President and the courts are going to continue to adjust and accommodate.

What we are trying to get at here is a requirement that departments and agencies of the Government set forth very clearly the rules and regulations governing access to information and that they make information available unless it is withheld in the interest of national defense or by some statutory authority given by the Congress.

Now, you recognize the right of Congress to enact a statute directing the disposal of certain types of this information. You have a reservation, and I imagine this reservation goes to the so-called internal working papers.

Mr. SCHLEI. Yes, sir. That is one category of documents.

Mr. Moss. And reflecting in many instances the final official acts of departments and officials of Government.

Mr. SCHLEI. Yes, sir.

Mr. Moss. And here you feel we have no right to act?

Mr. SCHLEI. Well, I think, Mr. Chairman, that the committee has—that the Congress has every right to legislate with respect to the ordinary handling of Government information. But I think that there is a residual Executive prerogative to withhold despite any legislation in a situation where the national interest demands it in the considered judgment of the Executive.

That is the traditional concept of Executive privilege. I have not taken the position that no legislation could be constitutional in this area by any means.

Mr. Moss. We do not challenge that right to withhold for the national interest, because we specifically require it by Executive order to be kept secret in the interest of the national defense or foreign policy. Now, that is very broad. That means that any of these documents that are of sufficient significance to the security of this Nation or to the interests of this Nation as it deals with other nations can, by appropriate designation, be excluded from the provisions of this act.