

Mr. RUMSFELD. Let me ask the chairman: Have you received reports from the other departments of the Government that are not requesting an opportunity to testify?

Mr. MOSS. Oh, yes.

Mr. RUMSFELD. They have all sent a report in lieu of actually appearing?

Mr. MOSS. Not all. As a matter of fact, we did not get a comment from the Bureau of the Budget.

Mr. SCHLEI. Mr. Chairman, I happen to know that it will be up very shortly.

Mr. RUMSFELD. I was struck here today by the similarity between the testimony we received here and some that is going on in the Judiciary Committee on the voting rights bill, where witness after witness is appearing saying it is unconstitutional, and, of course, in that instance the Justice Department is saying it is constitutional. And under questioning, a great many of the people who are saying it is unconstitutional are having a great deal of difficulty coming up with any precise reasons as to why it is unconstitutional.

It seems to me that when the Justice Department testifies here, if you are going to claim this bill is unconstitutional, that a somewhat more precise definition of why it is and of executive privilege would have been in order.

Further, it strikes me that your statement conflicts with your answers to the chairman. As I have listened, you began with the statement which said that the bill was unconstitutional, and you made statements to the effect that we could not substitute for executive judgment a verbal formula to be applied by another branch of Government which is not charged with responsibility for execution of the laws, that the problem is too vast to yield to any such solution, implying that legislation in this solution is not only unconstitutional but impossible, referring to the infinite number of situations where it should be withheld—as defined by the executive branch.

And, yet, in answer to the chairman, you have indicated that Congress does have the legislative authority and that Congress has, in fact, already entered this area in appropriation bills, by requiring disclosure of certain types of information.

So your statement says it is unconstitutional, yet at the same time you admit Congress is already involved here.

Mr. SCHLEI. Well, I might begin by saying, Congressman, that the last word from the executive branch on these required disclosure riders to appropriation bills is that they are invalid.

Mr. RUMSFELD. That they are invalid?

Mr. SCHLEI. Yes. I think that was an opinion by Attorney General Rogers under the previous administration, but, at any rate, the last word is one of opposition from the executive branch.

My view is that so long as the ultimate prerogative of the executive is recognized that there can be a provisional regulation of the handling of information short of an exercise of that prerogative by the Congress, and I think that that is what happens in the relations between the executive branch and the judicial branch. There is an executive privilege problem there too.

Mr. MOSS. Mr. Rumsfeld, would you yield at that point?

Mr. RUMSFELD. Yes, sir.

Mr. MOSS. How can we recognize it if you cannot define it?