

Mr. SCHLEI. Well, Mr. Chairman, I would be pleased to supply a definition.

Mr. MOSS. Of executive privilege?

Mr. SCHLEI. Yes.

Mr. MOSS. One that you would like to live with?

Mr. SCHLEI. Well, I think I could live with it, Mr. Chairman, but it would be awfully broad, broader than your taste I think.

Really, as you know, there is an extensive literature on this matter, and the law consists not only of statements, of definitions, but of policies, and precedents, extending back to Washington. It is like many another concept in the law which——

Mr. MOSS. It was also used as the basis for pleadings in the *Youngstown Sheet & Tube* case, was it not?

Mr. SCHLEI. You mean when President Truman——

Mr. MOSS (continuing). Seized the steel mills.

Mr. SCHLEI. Seized the steel mills? Yes. Well, I think that was one of the concepts that was called upon as a possible analogy, but——

Mr. MOSS. The court did not agree that there was a privilege broad enough to cover that, though, did they?

Mr. SCHLEI. To seize the steel mills? No, sir; it did not.

Mr. RUMSFELD. Mr. Chairman, in view of the fact that the Justice Department has come before us with a very brief statement saying simply that the bill is unconstitutional and that venturing into this area is unconstitutional, and the disagreement that some members of the committee have with this position, I wonder if it might be valuable to have the Justice Department take that extra step of going beyond that and saying that if it were constitutional they feel that certain types of information within the Department are of such a nature that some changes in the provisions of the bill would be helpful to them and would protect the public interest better, even though they say that it is unconstitutional.

I would still like to have their opinion.

Mr. MOSS. It would be more constructive, I think, than what we have before us at the moment.

Mr. SCHLEI. If I could respond immediately to that, Mr. Chairman, this may not be terribly precise but it will indicate some of the kind of documents that we ourselves have that we would have trouble with under this legislation.

One is the prisoners' files, other than medical, involving other than medical information, that seems to us to be problematical.

The second category——

Mr. MOSS. On that, parole records which are part of the file are in a different category, are they not?

Mr. SCHLEI. Well, we have a problem with parole board files. Under exception No. 7, investigatory files compiled for law enforcement purposes would be protected. And that probably would cover information collected in an investigation looking toward revocation of parole. But a question we would ask would be: Would it cover the board's case summary prepared immediately following the appearance of an applicant before it? Would that be covered by exception 7 for investigatory files compiled for law enforcement purposes?

That seems to us a problem that ought to be resolved one way or another if the legislation were to go forward.