

attached to appropriation and other bills in the past have been unconstitutional; is that correct?

Mr. SCHLEI. Well, that is not exactly what I said, Congressman. If you do not mind my being a little technical, I said that the appropriation rider dealing with the Inspector General's Office in the AID agency was regarded as unconstitutional in an opinion of the Attorney General under the Eisenhower administration. The Attorney General was Attorney General Rogers.

Mr. RUMSFELD. Is such an opinion considered to be the opinion of the Justice Department?

Mr. SCHLEI. Yes, that opinion has been referred to several times I believe in somewhat similar, analogous situations with approval in this administration.

There have been some riders, for example, one that said that no sale or lease of property could be made by the Panama Canal Corporation without the approval of a committee of Congress, and I think the Rogers opinion was referred to in connection with that rider. But we have never that I recall offhand dealt with the specific problem, and the general principles expressed in it at least are those—

Mr. MOSS. Would you yield at that point?

Mr. RUMSFELD. Yes.

Mr. MOSS. Is there not also an opinion of the Comptroller General that the rider in connection with the Inspector General's Office is constitutional?

Mr. SCHLEI. I think there was a dead collision there, Mr. Chairman. That is my recollection of it.

Mr. MOSS. Back in the gray area, and it is not clear who is right and who is wrong? An accommodation was made?

Mr. SCHLEI. That is correct, sir. There was no clearcut resolution of that dispute as I recall in accordance with one opinion or the other. It was walked away from.

Mr. MOSS. A draw at the moment?

Mr. SCHLEI. A draw the last I heard.

Mr. MOSS. But here is the danger: It is a draw when you look at the record, but it will be cited from now to eternity on appropriate occasions by the Attorney General's Office as further supporting their claim that such actions are unconstitutional.

Mr. RUMSFELD. That was my point, Mr. Chairman. What are the mechanics for testing such a position?

Mr. SCHLEI. Well, the mechanics, the forum in which disputes of that kind have to be resolved, Congressman, is before the public and before the Congress in the Halls of Congress. The judiciary cannot resolve a conflict between the executive branch and the legislative branch. We have a separation of powers principle in our Government, and when there is a collision between two of the coequal branches, it has to be resolved by the political process.

Mr. RUMSFELD. You are saying, then, there is no legal procedure or set of procedures whereby the executive branch, the Department of Justice, could test such a position?

Mr. SCHLEI. Well, if there were a lawsuit to resolve that problem, the Comptroller General would be represented by the Attorney General of the United States, and the Attorney General might in his capacity as attorney of record see fit to confess judgment. And in that