

Mr. SCHLEI. No, they have not. I think they have generally appreciated the necessity of being able to circulate information widely and to publish a newspaper, for example, free of discriminatory taxation, as in the *Grosjean* case.

The Supreme Court I think has been very sensitive to the right of free speech, and I think perhaps we could find places where they have recognized its relationship to the right to know to some degree.

Mr. KASS. Mr. Schlei, what is your current statutory authority for withholding prisoner files from the public?

Mr. SCHLEI. I do not believe there is any statutory authority.

Mr. KASS. Could you check for the record 18 U.S.C. 4082 and supply us with information as to whether that goes to the question of withholding prisoners' information?

Mr. SCHLEI. I will indeed, sir.

(The material referred to follows:)

The section provides simply that persons convicted shall be committed to the custody of the Attorney General or his authorized representative. It contains no provision relating specifically to the availability of prisoner records or files.

Mr. KASS. Do you have statutory authority, presently, for the internal communications regarding prospective litigation? I think you mentioned the Bureau of Land Management. What is your current statutory authority for withholding those?

Mr. SCHLEI. Well, I do not think there is any statutory authority in the usual sense. Conceivably, the authority could be traced to some application of the Federal rules. But that would be a sort of a logical exercise. The fact of the matter is that it rests on judicial doctrines as to what parties in litigation will be compelled to produce and what is privileged, what is out of bounds. It is nonstatutory privileges and attitudes.

Mr. KASS. Is the information contained in these litigation files primarily factual?

Mr. SCHLEI. Well, it would be hard to categorize them as factual or legal. They are just both and mixed. There are letters that talk about facts, and there are letters that talk about facts in the light of the law and make settlement recommendations, that appraise facts and appraise legal positions. They are just every imaginable kind of—

Mr. KASS. On the assumption that H.R. 5012 became law and that one of the exemptions from disclosure would be No. 5, dealing with interagency or intra-agency memoranda or letters solely on matters of law or policy, what would the Department of Justice opinion be as to whether your litigation files dealing with mixed matters of law, policy and/or facts would fall under this exemption?

Mr. SCHLEI. Well, we have thought that they would not. That has been our interpretation, our estimate, as to how this language would be interpreted. Because this word "solely" makes you pull in your horns on making any broad gage interpretation.

And these letters and materials just would not deal solely with matters of law or policy. There would be facts about the conduct of people and remarks, the evidence of what people said, that might be presented in support of a claim or against a claim—evidence, in other words, which is obviously something other than law or policy.

Evidence is factual matters, and yet they really are the kind of thing that I think that all the members of the committee and every-