

Mr. Moss. We had the unique instance of the President, in signing the bill, handing down an interpretation of the law and, as I pointed out the day of the signing in a statement placed in the Congressional Record, it was still the role of the courts to determine what the Congress intended and what the law is. I would be perfectly willing to leave that to the courts.

Mr. SMITH. I have in my statement cited some examples of disclosure which would be required under the proposed bill which we believe would be damaging either to the general public interest or to the private interests of many individuals. These have been cited out of a sincere desire to be of assistance to the subcommittee. Should the committee decide to recommend legislation in this area, I should certainly hope that it would see fit to make amendments, particularly as to the scope of the eight exemptions, to deal with these problems. However, I would not be honest with the committee if I did not express my conviction and that of the Treasury Department that no effort at legislation in this area will be beneficial unless it recognizes and contains express provision for the Executive to prohibit disclosure of information on grounds of the public interest. As I have pointed out, we believe this is a constitutional prerogative of the Executive and one that he must be able to exercise. If this reservation to the Executive were to be incorporated in the bill, then I believe that it is possible that my suggestions might be of assistance to the committee in its further consideration of this legislation. Should it be the committee's conclusion, on the other hand, that this reservation should not be included in the legislation, then I am not sanguine about the possibility of its preparing a bill which my Department would find acceptable, because I don't believe that it is possible for the Congress or anyone else to conceive a bill that can adequately anticipate and specify all of the situations in which, to protect the public interest, the Government should be able to refuse to disclose information.

I appreciate very much the opportunity which the subcommittee has given me to express the views of the Treasury Department. I would be glad to try to answer any questions that the committee may have.

Mr. Moss. First, let me say that I regard the statement you have given as being more in keeping with what we anticipated than was the statement we received from the Attorney General's Office this morning. We have attempted to deal with some of the areas of concern to you. I think that is appropriate, and certainly that is the reason we have hearings before these committees.

On page 13 you state that—

I would not be honest with the committee if I did not express my conviction and that of the Treasury Department that no effort at legislation in this area will be beneficial unless it recognizes and contains express provision for the Executive to prohibit disclosure of information on grounds of the public interest.

Are you saying that we should, in anything we might decide upon here in committee, recognize a constitutional right of the President to act contrary to the statute if he finds it in the public interest?

Mr. SMITH. Well, sir, I think what I intended mainly there was to say that unless it incorporated what is, in effect, in section 3 of the Administrative Procedure Act at present, it would not be adequate. It does not necessarily, I feel, have to be the same words, but the equivalent of this provision in section 3 which reads: