

Mr. Moss. Yes; I think there have been improvements. This legislation here is proposed in an effort to bring about further improvements.

Mr. RUMSFELD. Mr. Chairman, may I ask a question at this point?

Mr. Moss. Certainly.

Mr. RUMSFELD. In your statement on page 13 it says—

I don't believe 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.

This statement is a statement that is very similar to the one that was made this morning by a representative of the Justice Department, saying basically that this just cannot be done; the bill cannot be drafted that could solve the problem.

It reminds me of discussions before other committees where a portion of the executive branch of the Government comes before the Congress and requests contingency funds and says, "We just cannot possibly detail every aspect of these problems and we request a contingency fund."

Should the emphasis be on the words "anticipate in the future"? If we took out what might happen in the future, or types of information it might be desirable to refuse to disclose that we do not know about now, isn't it conceivable in your mind that some sort of bill could, in fact, be drafted to meet those instances that we today know of and that if some—I say this facetiously, some sort of a contingency fund for the future or some proviso whereby things that came up in the future that we were not aware of, could be worked out on some other basis during an interim period? Are you going to stand by this statement taking away the word "anticipate" and, therefore, the unknowns of the future, are you going to stand by the statement that a bill just plain cannot be drafted?

Mr. SMITH. Well, I think mainly, I was referring to anticipate for the future. I would say this: that we probably could do a pretty good job of listing the things that we felt should be withheld at present in the public interest. I am not sure that—

Mr. RUMSFELD. Everything is in the public interest; I mean, that is the only reason we are having this hearing.

Mr. SMITH. Well, records should be withheld because it is not in the public interest or contrary to the public interest to disclose them. I am not sure that your committee would agree with our enumeration, but let me say this: that in this statement on page 13 I was not trying to say that necessarily nothing could be done by legislation in this area. I think, as Mr. Schlei said this morning, and I would agree with him, that if there was a reservation to the Executive so that he could exercise what has been called executive privilege, then it is conceivable that something might be gained by legislation which would carve out areas where Congress feels that disclosure should be made, although I must say that my own personal opinion is that, as I said at the beginning of my statement, the problems are not so much the law on the subject as the implementation of the law.

I think if every department and agency of the Government would honestly and conscientiously adhere to what is in the Administrative