

to us, such as the voluntary questionnaires which banks and businessmen are now giving to the Government as to their international lending activities, for instance.

Secondly, and I do not pose as anything like the constitutional law expert that Mr. Schlei is, but under our separation of powers, as I understand it, while these laws are passed by the Congress and, therefore, we would not get this information if it were not for the laws passed by Congress, once these laws are passed by the Congress, the Constitution reposes in the President the responsibility and authority for the faithful execution of them and, therefore, it may be that even though Congress begot the child, it does not have complete control over the child after it is begot, to put it bluntly.

Mr. GRIFFIN. Are you saying that Congress, if it could have provided how such information would be made available, cannot amend the original statute—that we have somehow lost this legislative power that we would have had in the beginning?

Mr. SMITH. Well, that is a very difficult question for me to answer. I would only say this, that I am not at all sure but what even if you provided as to how the information, how and when and to whom it should be made available, that there might not be a situation in which the President, for overriding considerations of the national interest, would feel that he would not make it available.

Now, this is getting into a very—an area that I am very uneasy about.

Mr. MOSS. Would you yield?

Mr. GRIFFIN. Yes, I yield.

Mr. MOSS. Are you saying then in the faithful execution of the law the President has the right to disregard the law?

Mr. SMITH. No; because he has to support and defend the Constitution and the laws of the United States. But he also has the responsibilities for the national security and various other things under the Constitution.

Mr. MOSS. He shall take care of the law, to see that the law is faithfully executed.

Mr. SMITH. That is right. I suppose in a situation where the overriding national interest that I referred to related to one of his other constitutional or legal responsibilities. But I am getting into deep water here and I think purely and simply I do not know the answer to your question. I think, Mr. Schlei attempted to answer it this morning, and I do not feel that I can do any better than he.

I wanted to make one further point though before I forget it, sir, Mr. Rumsfeld, that while we have set forth in our regulations the circumstances under which records can be made available, we ran into the same problem that we feel confronts the Congress in trying to legislate in this area and, therefore, item 6 of the list of things that won't be disclosed is: "if the disclosure of the information would clearly be inimical to the public interest."

In other words, we had to have a catchall phrase in our regulations because we did not feel that we could anticipate all of the possible situations in the future, so that what we have in our regulations parallels the point I was making with respect to the legislation.

Mr. RUMSFELD. I have a question, Mr. Chairman.

On page 13 of your statement again toward the earlier portion, you say that you would not be honest with the committee if you did not