

express the conviction 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. There is your Executive privilege again.

Mr. SMITH. Yes, that is the Executive privilege.

Mr. RUMSFELD. Why, if there is no law today which recognizes the principle of Executive privilege, should the bill that the subcommittee is considering bring it up? Doesn't this stem from the Constitution?

Mr. SMITH. I think the Administrative Procedure Act recognizes this. The first paragraph of section 3 exempts from the provisions—

Mr. RUMSFELD. Was this the creation of it or did it stem from the Constitution?

Mr. SMITH. Well, no—the Administrative Procedure Act did not originate the doctrine of Executive privilege; that is right.

Mr. RUMSFELD. That is my point, it did not create the concept or authority.

Mr. GRIFFIN. Do you claim it recognizes it though?

Mr. SMITH. The Administrative Procedure Act?

Mr. GRIFFIN. Yes.

Mr. SMITH. I believe it does.

Mr. GRIFFIN. What section?

Mr. SMITH. The first sentence.

Mr. GRIFFIN. I see.

Mr. RUMSFELD. My point is I fail to see why the proposal that is being considered by this subcommittee should contain express provision for Executive privilege since this doctrine comes from the Constitution and would exist, according to the people who subscribe to this theory, as the gentleman who appeared this morning obviously does, apart from anything we did or did not do.

Mr. SMITH. I would only say—

Mr. RUMSFELD. You see my point?

Mr. SMITH. Yes, I see your point.

I would only comment this way, that since it is in the law now and it is a position which the Executive has taken traditionally since the beginning of the Nation practically, if it were to be omitted from the law now, and I am sure that if this committee were to omit it from the law now, they would make it clear they were omitting it because they did not recognize the validity of the doctrine of Executive privilege, then it seems to me that the bill would squarely raise this constitutional issue.

Mr. GRIFFIN. Would the gentleman yield to me?

Mr. RUMSFELD. Certainly.

Mr. GRIFFIN. I want to enter into the record a challenge to the statement that section 3 expressly recognizes the doctrine of Executive privilege. I assume you are referring to the words "except to the extent that there is involved any function of the United States requiring secrecy in the public interest"—

Mr. SMITH. Yes.

Mr. GRIFFIN. "Or any matter relating solely to the internal management of an agency."

Mr. SMITH. The first.

Mr. GRIFFIN. Yes.