

FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,

March 31, 1965.

Hon. LYNDON B. JOHNSON,
President of the United States,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: The use of the claim of "Executive privilege" to withhold Government information from the Congress and the public is an issue of importance to those who recognize the need for a fully informed electorate and for a Congress operating as a coequal branch of the Federal Government.

In a letter dated May 17, 1954, President Eisenhower used the "Executive privilege" claim to refuse certain information to a Senate subcommittee. In a letter dated February 8, 1962, President Kennedy also refused information to a Senate subcommittee. There the similarity ends, for the solutions of "Executive privilege" problems varied greatly in the two administrations.

Time after time during his administration, the May 17, 1954, letter from President Eisenhower was used as a claim of authority to withhold information about Government activities. Some of the cases during the Eisenhower administration involved important matters of Government, but in the great majority of cases executive branch employees far down the administrative line from the President claimed the May 17, 1954, letter as authority for withholding information about routine developments. A report by the House Committee on Government Operations lists 44 cases of executive branch officials refusing information on the basis of the principles set forth in President Eisenhower's letter.

President Kennedy carefully qualified use of the claim of "Executive privilege." In a letter of February 8, 1962, refusing information to a Senate subcommittee, he stated that the "principle which is at stake here cannot be automatically applied to every request for information." Later, President Kennedy clarified his position on the claim of "Executive privilege," stating that—

* * * this administration has gone to great lengths to achieve full cooperation with the Congress in making available to it all appropriate documents, correspondence, and information. That is the basic policy of this administration, and it will continue to be so. *Executive privilege can be invoked only by the President and will not be used without specific Presidential approval.*

As a result of President Kennedy's clear statement, there was no longer a rash of "Executive privilege" claims to withhold information from the Congress and the public. I am confident you share my views on the importance to our form of government of a free flow of information and I hope you will reaffirm the principle that "Executive privilege" can be invoked by you alone and will not be used without your specific approval.

Sincerely,

JOHN. E. MOSS, *Chairman.*

I think that this correspondence represents a continuity in policy which should provide for the greatest cooperation between the Executive and the Congress, and in my judgment it represents the proper scope of executive privilege.

We are very pleased to have as our first witness this afternoon, Mr. Creed Black, managing editor of the Chicago Daily News, and chairman of the American Society of Newspaper Editors Freedom of Information Committee.

As chairman, I would like to acknowledge the many contributions made by ASNE's work with this committee, from the very first step we took after being chartered back in June 1955. In an entirely strange area to me, I was able to turn to the chairman of ASNE's Freedom of Information Committee, Russ Wiggins, editor of the Washington Post, for some very wise, instructive counsel. I appreciated it then, as I have appreciated working with each chairman, including the man who will now give the committee the benefit of the views of his organization.

Mr. Black, will you introduce the other gentlemen accompanying you?