

Mr. BLACK. Well, again, I think that to some extent this is like the question of photographs. It's such a broad question in its own right—this whole matter of pretrial publicity—that I wouldn't want to get too deeply involved in it here. But so far as I know, newspapers have not asserted the right to get investigatory files of the kind which would be exempt under the legislation proposed here.

Mr. KASS. Mr. Black, wouldn't that statement that you made that newspapers would not be interested in getting these files apply to all these exemptions but primarily such things as state and military secrets?

Mr. BLACK. I think so. I don't think newspapers have ever complained about legitimate security classifications, for instance.

Our big complaint has been when such legitimate classifications are used as a basis for withholding information which really doesn't merit that kind of classification.

Mr. KASS. Thank you, Mr. Chairman.

Mr. MOSS. Well, I want to thank you very much.

Mr. RUMSFELD. Mr. Chairman, could I ask a question of Mr. Rogers before—

Mr. BLACK. Mr. Rogers—

Mr. RUMSFELD. If not, fine.

Mr. BLACK. Well, it's up to him. He is here as our counsel, and if he wants to field a question, fine.

Mr. RUMSFELD. Let me ask you, then—

Mr. BLACK. Ask me, and I will consult with him.

Mr. RUMSFELD. In Mr. Schlei's testimony, and Mr. Griffin mentioned this tangentially, he referred to the 1958 amendment which the President signed only upon assurances that the amendment did not upset or diminish any power of the Executive privilege which he derived from the Constitution.

I don't recall that circumstance, but it strikes me that such assurances on the part of the President weren't necessary. Certainly, something passed by the Congress could not really diminish anything that flows from the Constitution to the President, and by the same token, the gentleman from the Justice Department then stated on page 9 in his testimony that if we entered this area, if the Congress did, in fact, enact a bill, it would have to specifically refer to the concept of Executive privilege.

It seems to me that this is not correct, and I would think that Executive privilege would exist from the Constitution to the extent that it does exist, if it does exist, completely apart from anything we do in this bill.

Is this your understanding?

Mr. ROGERS. I think you should say yes. [Laughter.]

Mr. BLACK. Yes. [Laughter.]

Mr. RUMSFELD. I thank both of you.

Mr. MOSS. I would like to say that I find most intriguing as a subject for thought and study, the little statute passed in the second Washington administration. Here were all of the men who were contemporary to the creation of the Republic and the framing of its Constitution where intent could probably be pretty well established by discussions. Congress gave to the Executive the authority to prescribe rules and regulations for the custody, use, and preservation of