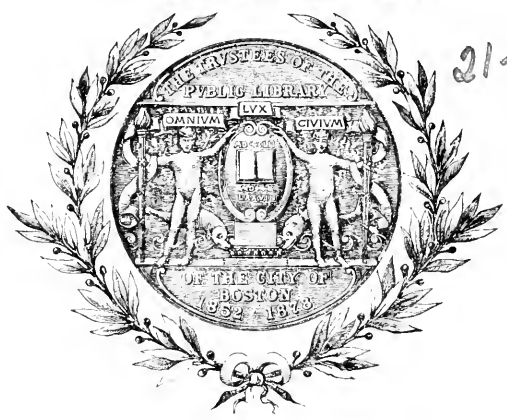


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SPECIAL SENATE INVESTIGATION ON CHARGES  
AND COUNTERCHARGES INVOLVING: SECRETARY OF THE ARMY ROBERT T. STEVENS, JOHN G. ADAMS, H. STRUVE HENSEL AND SENATOR JOE McCARTHY, ROY M. COHN, AND FRANCIS P. CARR

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HEARING  
BEFORE THE  
SPECIAL SUBCOMMITTEE ON  
INVESTIGATIONS OF THE COMMITTEE ON  
GOVERNMENT OPERATIONS  
UNITED STATES SENATE

EIGHTY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

**S. Res. 189**

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PART 34

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MAY 17, 1954

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SPECIAL SENATE INVESTIGATION ON CHARGES AND  
COUNTERCHARGES INVOLVING: SECRETARY OF THE  
ARMY ROBERT T. STEVENS, JOHN G. ADAMS, H. STRUVE  
HENSEL AND SENATOR JOE McCARTHY, ROY M. COHN,  
AND FRANCIS P. CARR

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MONDAY, MAY 17, 1954

UNITED STATES SENATE,  
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE  
COMMITTEE ON GOVERNMENT OPERATIONS,  
*Washington, D. C.*

The subcommittee met at 10:10 a. m., pursuant to recess, in the caucus room of the Senate Office Building, Senator Karl E. Mundt, chairman, presiding.

Present: Senator Karl E. Mundt, Republican, South Dakota; Senator Everett McKinley Dirksen, Republican, Illinois; Senator Charles E. Potter, Republican, Michigan; Senator Henry C. Dworshak, Republican, Idaho; Senator John L. McClellan, Democrat, Arkansas; Senator Henry M. Jackson, Democrat, Washington; and Senator Stuart Symington, Democrat, Missouri.

Also present: Ray H. Jenkins, chief counsel to the subcommittee; Thomas R. Prewitt, assistant counsel; and Ruth Y. Watt, chief clerk.

Principal participants: Senator Joseph R. McCarthy, a United States Senator from the State of Wisconsin; Roy M. Cohn, chief counsel to the subcommittee; Francis P. Carr, executive director of the subcommittee; John G. Adams, counselor to the Army; Joseph N. Welch, special counsel for the Army; James D. St. Clair, special counsel for the Army; and Charles A. Haskins, assistant counselor, Department of the Army.

Senator MUNDT. The committee will please come to order.

The chairman would like to begin the week as he begins each session, by welcoming our guests to the committee room and advising our guests of a standing rule of this committee, which is that there are to be no manifestations of approval or disapproval of any audible kind at any time during the course of these hearings. These are important hearings. We want to conduct them in an atmosphere of seriousness and, while you are welcome here as our guests because this is public business, the officers and the plainclothes men in the audience have a standing instruction from the committee to politely escort from the room immediately anybody who violates the conditions under which he entered the room, which was to agree to refrain from any manifestations interfering with the hearing.

With that admonition, we are happy to have you here.

We will begin this morning by announcing that the Chair has received his reply from the Attorney General to a letter which was written some time ago in connection with the so-called 2¼-page document, and in the interest of time I shall not read my letter of May 10 in its entirety. It is a little long. But I will ask to include it in the record as an exhibit appropriately marked, and I shall read the significant passages.

(The letter referred to was marked "Exhibit No. 19 (a)" and will be found in the appendix on p. 1268.)

Senator MUNDT. For the purposes of recapitulation, you will recall that this dealt with the 2¼-page document—by the way, it has been returned, and I will ask that it be passed down to Senator McCarthy, since it is his property—in which, paraphrasing my letter, I asked the Attorney General whether his admonition against publishing or releasing the contents of that document in toto held for all portions and all paragraphs. The significant part of my letter, after reviewing our previous interrogatory of the Attorney General, was this:

Would it be possible for you to authorize or clear for use as an exhibit before our subcommittee any of the paragraphs or portions of the enclosed 2¼-page document? It has occurred to some members of the subcommittee that the fact that the 2¼-page document may contain the names of some of those still under investigation or being used as informants could be the basis on which you requested the contents be not divulged. If so, perhaps such names could be deleted and other portions of the document released.

Will you please write me your reaction to this request, and if you feel it is against the best security interests of the United States to permit any portion at all of the 2¼-page document to be used as an exhibit before our subcommittee, I am sure it will be helpful to us if you will give your specific reasons for making such a determination. We, of course, do not want to make public anything which is deemed to be injurious to our national interest to disclose, but in our search for truth in the current hearings, on the other hand, we would like to have available for our consideration every fact and document which can be included in our record without doing violence to essential security considerations.

We will appreciate a reply as soon as possible.

I talked about the enclosures.

I have here a reply from the Attorney General:

MAY 13, 1954.

Honorable KARL E. MUNDT,

*United States Senate, Washington, D. C.:*

In reply to your letter of May 10, 1954, for the reasons set forth in my letter of May 6, it is my opinion that it would not be in the public interest to release the two and one-fourth page document which purports to be a copy of a letter or to release any part thereof.

As I pointed out, the document is not authentic in that no such letter was written by Mr. J. Edgar Hoover. The portions of this document which were taken verbatim from the fifteen page interdepartmental FBI memorandum dated January 26, 1951, by an unidentified person are classified "Confidential." By law this means they must not be disclosed "in the best interests of the national security."

If the "Confidential" classification of FBI reports and memoranda is not respected, serious and irreparable harm will be done to the FBI. This principle applies with equal force to the release of portions of the FBI memorandum which are contained in the two and one-fourth page document as well as to the memorandum as a whole.

The Department has under consideration at the present time possible violations of the criminal law as a result of the referral of the transcript of the hearings to the Department by your Subcommittee. The two and one-fourth page

document is involved and its declassification at this time might affect adversely or even defeat the proper prosecution of offenses involved in its preparation and dissemination. This consideration confirms my original opinion that it would not be in the public interest to declassify the document or any part of it at the present time.

Sincerely,

HERBERT BROWNELL, Jr.,  
*Attorney General.*

I ask that my letter in full, and the Attorney General's letter in full, be entered in the record, and properly identified.

(The letter from the Attorney General was marked "Exhibit 19 (b).")

Senator McCARTHY. Mr. Chairman, before you hand over that letter, could I see it? I would like the one from Brownell.

(Document handed.)

Senator McCARTHY. Mr. Chairman?

Senator MUNDT. Senator McCarthy?

Senator McCARTHY. May I say that I don't think this committee is bound by any letter from the Attorney General. He says now that the letter or document, call it what you may, the 2¼-page document, contains—it is taken verbatim from the 15-page memorandum.

I think, Mr. Chairman, and I am not going to ask for a ruling upon this this morning, because I think we should get on with the testimony, I do think the committee should go into executive session and read this 2¼-page document now, in view of the fact that it is established as having been taken verbatim from an FBI report. You will find, Mr. Chairman, that it states that an individual at the Signal Corps laboratory was in close touch with a Russian spy even up to the time of his trial, apparently, or right close to it. Without discussing this any further, I wish the Chair would call an executive session, read this letter to the committee, and determine what portions of it should be made public. I think portions of it should be made public. There is nothing further, Mr. Chairman.

Senator MUNDT. The Chair, of course, has discussed in the executive committee meetings, which we have periodically, the letter and what the committee desires to do with it. The Chair had agreed with Senator Symington, I believe, at the conclusion of our hearings on Friday, to permit him to proceed with a discussion with Mr. Adams in the general area of a point of order situation which has arisen because of some difficulty in finding out from Mr. Adams, and for Mr. Adams finding out for himself, exactly his relationship to certain information which we began to discuss in earlier hearings. So the Chair will recognize, out of order at this time, for that purpose, Senator Symington. And the Chair would also like to announce that there has just been sent to him, which he has distributed to the members of the subcommittee a letter from the White House on that subject, which he assumes has been made available to the press. I have one more copy, Mr. Welch. I will send that over to you. Otherwise, I have just enough copies for the subcommittee members. It says "Immediate Release" and it has the name of James C. Hagerty, the Press Secretary to the President, at the top. I assume it has been made available to the press.

## TESTIMONY OF JOHN G. ADAMS, COUNSELOR TO THE ARMY—

Resumed

Senator SYMINGTON. Mr. Adams?

Mr. ADAMS. Yes, sir.

Senator SYMINGTON. Have you the written instructions that you were going to deliver to the committee?

Mr. ADAMS. I do, sir.

Senator SYMINGTON. Would you deliver them, please?

Mr. ADAMS. Could I deliver them, did you say?

Senator SYMINGTON. Will you deliver them?

Mr. ADAMS. Yes, sir. This is the document here, sir.

Do you want it read, sir?

Senator SYMINGTON. What is the document?

Mr. ADAMS. It is a letter to the Secretary of Defense from the President of the United States.

Senator SYMINGTON. I see.

Mr. Chairman, in the last minute I have seen this document for the first time. May I say respectfully to the committee that in thinking about this over the weekend there appeared to be only two reasons why Mr. Adams, a member of the executive branch, would bring this matter up voluntarily, these names up voluntarily in these hearings. The first would be carelessness which, because he has been legally trained and has eminent counsel, I would doubt. The second would be that for whatever reason it was, perhaps he wanted support. More probably, based on my experience in the executive department, he had worked it out that if the names came in, the information with respect to the meeting would be available. Inasmuch as all this committee is trying to do is find the truth, I was very glad to cooperate with what I thought were the desires of the administration in bringing this information into the hearing voluntarily, to get the truth of that meeting, which apparently, based on Mr. Adams being there, was called in order to discuss those situations and those matters which are of such great interest to this committee in attempting to find the truth.

Not having had an opportunity, Mr. Chairman, to read this directive or this letter from the President of the United States prior to any further comments on this matter, on my part, I would appreciate the opportunity of reading the letter and perhaps discussing it further this afternoon.

Senator MUNDT. Very well.

And may the Chair suggest by unanimous consent that the copy of the letter also be inserted in the hearings at this point and marked with an appropriate exhibit number.

Mr. ADAMS. Mr. Chairman, I point out that there is about a 10-page memorandum from the Attorney General attached to the President's letter and it also should be inserted.

Senator MUNDT. The Chair agrees. Is this the entire document, John?

Mr. ADAMS. Yes, sir.

Senator MUNDT. That will be exhibit No. 20, then, the letter with attached pages of memorandum.

(The documents referred to were marked "Exhibits Nos. 20 (a) and 20 (b)." Exhibit No. 20 (a) appears on page 1249. Exhibit No. 20 (b) will be found in the appendix on p. 1269.)

Senator McCARTHY. Mr. Chairman, I have not seen the letter. I am very curious to know what is in the letter. I wonder if it could not be read.

Mr. ADAMS. Do you wish me to read the letter?

Senator MUNDT. We would not want to read the whole memorandum. It is a pretty long memorandum.

Senator McCARTHY. I mean just the letter and not the memorandum.

Senator MUNDT. I think there is no objection. Do you have a copy of the letter, Mr. Adams?

Mr. ADAMS. Yes, sir.

Senator MUNDT. And right after that we will put in the memorandum.

Mr. ADAMS. This is a letter signed Dwight D. Eisenhower addressed to the Honorable, the Secretary of Defense, Washington, D. C.:

DEAR MR. SECRETARY: It has long been recognized that to assist the Congress in achieving its legislative purposes every Executive Department or Agency must, upon the request of a Congressional Committee, expeditiously furnish information relating to any matter within the jurisdiction of the Committee, with certain historical exceptions—some of which are pointed out in the attached memorandum from the Attorney General. This Administration has been and will continue to be diligent in following the principle. However, it is essential to the successful working of our system that the persons entrusted with power in any one of the three great branches of Government shall not encroach upon the authority confided to the others. The ultimate responsibility for the conduct of the Executive Branch rests with the President.

Within this Constitutional framework each branch should cooperate fully with each other for the common good. However, throughout our history the President has withheld information whenever he found that what was sought was confidential or its disclosure would be incompatible with the public interest or jeopardize the safety of the Nation.

Because it is essential to efficient and effective administration that employees of the Executive Branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the Subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it they are not to testify to any such conversations or communications or to produce any such documents or reproductions. This principle must be maintained regardless of who would benefit by such disclosures.

I direct this action so as to maintain the proper separation of powers between the Executive and Legislative Branches of the Government in accordance with my responsibilities and duties under the Constitution. This separation is vital to preclude the exercise of arbitrary power by any branch of the Government.

By this action I am not in any way restricting the testimony of such witnesses as to what occurred regarding any matters where the communication was directly between any of the principals in the controversy within the Executive Branch on the one hand and a member of the Subcommittee or its staff on the other.

Sincerely,

/s/ DWIGHT D. EISENHOWER.

To the letter, sir, is attached a 10-page memorandum from the Attorney General to the President.

Senator MUNDT. Thank you.

Of course, none of us have had an opportunity to read the memorandum. It is rather lengthy. From a quick look at it, the Chair notes it begins with a line of precedents starting March 1792, under the administration of President Washington, and includes a great many references down through history, including several under the

administration of President Roosevelt and 10 cases under the administration of President Truman.

The Chair believes, along with Senator Symington, we would want to have a little time to look over this memorandum and the attached exhibits before trying to make any quick, snap judgment.

Mr. ADAMS. I might state, Mr. Chairman, that the letter is dated May 17, 1954, which is today.

Senator McCARTHY. May I see the letter, Mr. Chairman?

Senator MUNDT. You may have my document to survey it, if you want to. The Chair will then proceed with the ordinary 10-minute rule and we will start with Mr. Jenkins if he has further questions of Mr. Adams.

Mr. JENKINS. I have no further questions, Mr. Chairman.

Senator MUNDT. The Chair has one or two that he will ask at this time. He may have some a little later. You will recall, Mr. Adams, since you were in the room during this entire hearing, that a number of questions were asked Secretary Stevens about a telephone call that he had with you and you had with him involving, if the Chair recalls correctly, two calls the same date, at which time you were at the New York or New Jersey end of the line and Secretary Stevens was here, and involving the status of General Lawton's command?

Mr. ADAMS. I do, sir.

Senator MUNDT. The Secretary at that time suggested—

Senator McCARTHY. Mr. Chairman.

Senator MUNDT. The Chair is endeavoring to ask a question.

Senator McCARTHY. I have a question of the Chair.

Senator MUNDT. The Chair is asking a question. Please do not interrupt him unless it has to do with the question.

Senator McCARTHY. I don't think the Chair has disposed of the previous business yet.

Senator MUNDT. The Chair has disposed of it temporarily and would like to continue with his question. During your 10-minute period you may get back to that business or Senator Symington may, but he is endeavoring to ask a question now.

Senator McCARTHY. I would like to ask the Chair a question here.

Senator MUNDT. The Chair really wishes you would not interrupt him in the middle of a question when he is asking the question.

Senator McCARTHY. When the Chair finishes that question—

Senator MUNDT. He would like to continue without interruption unless you object to the question.

Senator McCARTHY. Mr. Chairman, I don't object to your question.

Senator MUNDT. All right, let's wait until we get an answer and at an appropriate time I will recognize you. How would that be?

Senator McCARTHY. When the Chair finishes.

Senator MUNDT. I will recognize you at the appropriate time.

Will you read the question as far as I had gotten before the interruption, please?

(The reporter read from his notes as requested)

Senator MUNDT (continuing). That he was unable to recall fully the conversations and that we ask you about them. Could you recapitulate as briefly as possible, the nature, first of all, of the original call, which, I think, came from the Secretary to you?

Mr. ADAMS. My recollection, sir, is that on the afternoon of November 24, I am not sure whether it was the 24th, but the calls were on two

different days, I was in my hotel room in the Commodore Hotel at the end of the day, and I had telephoned the Secretary for the purpose of reporting to him the occurrences of the day. And during the course of the conversation, he stated to me that a matter had come to his attention which disturbed him, and that if it were true, it might be grounds for him to have to relieve General Lawton of his command. He did not detail it, but he pointed out to me that it was not concerned with the fact, it was not related to the fact, that General Lawton had been cooperating with Senator McCarthy and this subcommittee.

He asked me to see if I could find the time to see Senator McCarthy and point this out to him, and see if I could make Senator McCarthy understand that if the move proved to be necessary, that is, if the allegations proved to be true, if he found it necessary to take this action, that Senator McCarthy would understand that his action was based on the fact that—on facts different from the fact that General Lawton had been cooperating with the committee. That was about the substance of the first conversation.

Senator MUNDT. Would it be a fair summary to say that what the Secretary asked you to do was to discuss with the Senator the possibility that General Lawton might be removed—

Mr. ADAMS. That is right, sir.

Senator MUNDT. And to determine the Senator's reaction?

Mr. ADAMS. That is correct, sir.

Senator MUNDT. That was the nature of the first call?

Mr. ADAMS. That is correct, sir.

Senator MUNDT. Now, would you go to the second call which I think originated with you to the Secretary?

Mr. ADAMS. Yes, sir. I might describe to you the intervening events, if I may. Senator McCarthy made a radio broadcast or television broadcast that night, and I saw him after the broadcast and I saw Mr. Cohn also. I don't recall that I mentioned it at that time, but I very well may have. I saw them the following morning. I saw Mr. Cohn before I saw Senator McCarthy. At least I mentioned the matter with Mr. Cohn before I mentioned it with Senator McCarthy.

Senator MUNDT. Did you discuss with Mr. Cohn the fact that the Secretary was thinking of relieving General Lawton?

Mr. ADAMS. I did. I mentioned the fact that the Secretary had called me and he was disturbed about matters which had been brought to his attention and he asked me to talk to Senator McCarthy. Mr. Cohn suggested that I let him talk with Senator McCarthy about it first, which I did not do. Sometime within the next half day, I talked or within the next few hours, I brought the matter up to Senator McCarthy. I told him that Mr. Stevens had had these allegations and that he might find it necessary to relieve the officer, and that he had asked me to tell him about it, and to assure him that if this relief became necessary, that it would not be because of the fact that the officer had cooperated with the committee. My recollection of our conversation is that Senator McCarthy was a little bit—wasn't non-committal, but had indicated that if the Secretary found it necessary to do that, he would understand. Later on in the day, we talked about the matter together at lunch, I think, Senator McCarthy and Mr. Cohn, and at that time Senator McCarthy indicated some reluctance, indicated to me that he hoped that if Mr. Stevens found it necessary to

take this step, that he would not do it that day or that week, because of the fact that there would be conclusions drawn by newspapers unfriendly to Senator McCarthy that perhaps it had been an action merely because of the fact that General Lawton had been friendly with the committee.

Later in the day, in the middle of the afternoon, I was back in Mr. Cohn's office, and in the presence of Mr. Cohn and Senator McCarthy I called Mr. Stevens back and I reported this conversation to him. I told him that there was some reluctance and that Senator McCarthy felt that although he wouldn't want to say anything, he might be forced into a position where he would have to make comment about it, and that he had asked or hoped that if it were necessary for the Secretary to do this, he could defer it until about the first of the year, by which time probably the investigation of Fort Monmouth would have been over for 5 or 6 weeks, or so, and that there would not be this speculation in the press.

My recollection is that Mr. Stevens stated something to the effect that he couldn't promise; it might be that these things would be proved and that they would be of a serious nature and that he would have to move.

I, of course, did not relate that statement to Senator McCarthy, but the conversation was more or less—or Mr. Stevens' attitude was more or less left up in the air, and I think Senator McCarthy was left with the impression that I had advised Mr. Stevens of his reluctance to the move. That is the conversation as I remember it.

Senator MUNDT. You say Senator McCarthy and Mr. Cohn both heard your end of the conversation?

Mr. ADAMS. They were in the room, sir. The room was not large. There were other things going on in the room, but there was no reason why they shouldn't have overheard what I said. I made no effort to conceal it.

Senator MUNDT. They knew you were calling Secretary Stevens at that time on that?

Mr. ADAMS. Yes, sir.

Senator MUNDT. And, as a matter of fact, General Lawton was not removed, was he?

Mr. ADAMS. No, sir; he was not.

Senator MUNDT. And I believe is still in command at Fort Monmouth?

Mr. ADAMS. Yes, sir, he is.

Senator MUNDT. Passing to another topic, do you know of your own personal knowledge, Mr. Adams, whether, in fact, Private Schine received preferential treatment at any time to which he was not entitled as a soldier in the United States Army?

Mr. ADAMS. From my own personal knowledge, sir, I do not.

Senator MUNDT. I ask you this question as counsel for the Army: In the event it develops, through checking the investigation, checking the Inspector General's report, through a study of the facts, in the event that it develops that Pvt. G. David Schine did in fact receive preferential treatment as a member of the United States Army to which he was not entitled, who would be responsible for that fact, the Army officers who gave him the preferential treatment or the members of the committee staff that asked for it?



Mr. ADAMS. Sir, you are asking me a question that is very difficult to answer.

Senator MUNDT. That is right down your alley, because you are the counsel to the Army. You would have to advise somebody on that. This is the one question which, it seems to me, to which you could say, "Now you are talking my language."

Mr. ADAMS. May I have the question read again, please?

Senator MUNDT. Surely. Will you read the question?

(The reporter read from his notes as requested.)

Mr. ADAMS. Mr. Chairman, I think the fair answer is that the Army is responsible for administering the Army. The ultimate responsibility is in the Secretary. Subordinate commands have responsibilities delegated to them. It would be necessary to determine who in each instance was responsible. It may be decided that there had been fault on my part in passing on information to the various echelons of command and indicating that there was a desire for preferential treatment. If that is so, I would be at fault.

If it were to be determined that the Secretary had directed preferential treatment he would be at fault.

Senator MUNDT. The purpose of the Chair, may I say, is not to single out any particular individual in the Army to hold responsible for preferential treatment which may not have taken place, but to establish, if he can, for the record, that if such preferential treatment were actually accorded David Schine, it would be a responsibility of somebody, let us say, in the Army. Just leaving it that way, would that be correct?

Mr. ADAMS. Yes, sir; I think it is correct that it is fundamental in the Government that where an individual has the authority, he also has the responsibility.

Senator MUNDT. Thank you. That is a very good answer, a straight answer.

My time has expired.

Senator McClellan?

Senator McCLELLAN. Mr. Adams, under the letter you read this morning from the White House to the Secretary of Defense, according to my hurried interpretation of it—and I have only glanced at it once—do you consider that you are now under direct orders through channels from the White House not to divulge any conversation that took place in the conference which I believe you say was held on January 21?

When I say conference, I refer to that meeting held in Mr. Brownell's office, attended by the Deputy Attorney General, Mr. Rogers, Presidential Assistant Mr. Sherman Adams, and others. Do you consider now that you cannot give any information to this committee in view of that directive with respect to what occurred there at that time?

Mr. ADAMS. Yes, sir.

Senator McCLELLAN. And the conversations that took place?

Mr. ADAMS. Yes, sir; I do, sir. Senator McClellan, I saw this memorandum about 20 minutes before you did. I place the interpretation on it at this time that I am now prohibited from speaking about the conferences which I have had, that I have been so instructed.

Senator McCLELLAN. That you are prohibited from saying what occurred, any conversations that took place. You are not prohibited from saying that a conference was held, are you?

Mr. ADAMS. I am not—I don't think I am prohibited, sir, from saying that a conference has been held. I have already stated that.

Senator McCLELLAN. You have already stated that. And it was a conference regarding this controversy that has been held. That was the subject matter of it, was it not?

Mr. ADAMS. Yes, sir.

Senator McCLELLAN. I am led to ask you this question, in view of that statement, Mr. Adams. Was the action taken thereafter, after that conference, taken on the basis of the independent decision and judgment of the Secretary of the Army, or was it taken as the result of decisions made at that conference?

Mr. ADAMS. May I have that question read, please?

(Whereupon, the question was read by the reporter as above recorded.)

Mr. JENKINS. Mr. Chairman?

Senator MUNDT. Counsel Jenkins.

Mr. JENKINS. Of course, it is a very difficult thing to interpose an objection to a question asked by a member of this subcommittee. However, the question asked by the distinguished Senator from Arkansas would elicit from this witness indirectly information that he is not permitted to give directly, and I fear would impinge upon the Presidential directive.

I desire to call that to the attention of the committee, and of Mr. Adams, in all fairness to all parties concerned. I fear any answer Mr. Adams gave to that question might involve Mr. Adams in a violation of the directive that was issued by the President this morning.

Senator McCLELLAN. I am waiting for an answer.

Mr. WELCH. Mr. Chairman?

Senator MUNDT. Mr. Welch.

Mr. WELCH. I happen to share the view of Mr. Jenkins, and had he not spoken would have said the same thing, in less graceful and less cogent language.

It seems to me, Mr. Chairman, that Mr. Jenkins is correct, and that I have the somewhat distasteful duty of construing the document that is before us and instructing the witness that, in my opinion, he ought not to answer.

Senator McCLELLAN. The witness, then, follows the instruction of his counsel, does he, and declines to answer on the ground that it might be violating the directive under which he is now operating in testifying?

Mr. ADAMS. That is my opinion, sir.

Senator McCLELLAN. That is your opinion, also?

Mr. ADAMS. Yes, sir.

Senator McCLELLAN. Then if your opinion prevails and the advice of your counsel prevails and his interpretation and the interpretation of the counsel of this committee is correct, then it is impossible for this committee, for lack of testimony, because testimony is being withheld, to determine where the final responsibility lies for the action that was taken on January 21. Is that correct?

Mr. WELCH. Could that be read, please, sir?

Senator MUNDT. The reporter will read the question. (Whereupon, the question was read by the reporter as above recorded.)

Senator McCLELLAN. On January 21 and following January 21.

Mr. ADAMS. I just don't think I can answer your question, sir.

Senator McCLELLAN. You cannot answer that. What I am trying to determine is—and I think we are entitled to know it without going into any detail—is when did the responsibility shift from the Secretary of the Army, from the date of that conference, to the higher level authorities? In other words, who must take the responsibility for the actions which have been taken by the Secretary of the Army with respect to this controversy since the 21st day of January when you held this high-level conference? I don't want to blame the Secretary for it if he is not to blame, if he is under orders, any more than I want to blame you for not answering the questions, because you are under orders.

Mr. ADAMS. Once again, Senator McClellan, very respectfully, I feel that the letter from the President consists of instructions which I may not violate, and of course I cannot take from the record remarks I have already made, and they are on the record for the committee to read, but nothing can be added to it insofar as I can see.

Senator McCLELLAN. Well, I understand it. I haven't had time to really study this directive, but as I understand it, it precludes from telling what occurred down there at the conference. I am not asking you now what occurred down there, what was said, who gave orders or didn't give orders. I am simply trying to determine whether the Secretary of the Army and you, under his orders and directions, whether you two are now responsible for what may have occurred in connection with this controversy since January 21, when that high level conference was held. If you are carrying out orders and the Secretary carrying out orders from higher authority, you must be absolved from any blame. I am trying to determine where the responsibility lies. Now, you tell me that you can't tell that under this directive.

Mr. JENKINS. Mr. Chairman, as this committee well knows, I have interposed but very few objections to any question asked by a member of this committee. Mr. Adams is in a dilemma this morning. He has an order which has come to him through proper channels from the President of the United States, directing him to divulge nothing that occurred in the conference of January 21. My distinguished friend from Arkansas is now asking him for a result of that conference of January 21, the question being whether or not, since the conference of January 21, he and the Secretary were responsible or some other authority in the executive branch of the Government was responsible.

Mr. Chairman, I call the committee's attention to the fact that that would elicit from this witness a fact, and a fact that would naturally flow from that conference of January 21, and to that extent would be violative of the Presidential direction of this morning. That Senator McClellan, is the last objection I shall interpose with respect to that question, but I do want to make my position clear with respect to that matter. I do not think under the circumstances that it is a proper question. I do not think that Mr. Adams can properly answer that question unless he violates the instructions he has received from the highest executive officer of the land this morning.

Senator McCLELLAN. Mr. Chairman?

Senator MUNDT. Senator McClellan?

Senator McCLELLAN. I am going to ask the questions. They may be objected to and I may not get the answers. The witness may be quite proper, for him not to answer the questions, but I am going to try, as I started out to do in the beginning of these hearings, to place the responsibility where it belongs insofar as it is possible for this committee to get the proof. And I say to you now, Mr. Chairman, if we are going—if the committee is going to be left in a dilemma of not knowing whether the Secretary is responsible for the action taken after that date, or whether the responsibility is at a higher level, then we will never be able to completely discharge our responsibility in this proceeding. I ask you again, Mr. Adams, the simple question: From that date on, were you operating, you and the Secretary operating, under the directions of higher authority or were you making the decisions upon your own responsibility in your respective positions? You can refuse to answer, if you like, but the record will simply show that this committee is unable—I am not asking what occurred down there that day. I am not asking you anything that was said, any advice that was given, I am simply asking from that day on were you acting on your own or were you acting under orders from higher sources. I think the committee is entitled to know that. It is just a simple yes or no.

Mr. ADAMS. May I confer a moment, sir, with counsel?

Senator MUNDT. The Chair thinks he should pass upon the objection raised first by our counsel. May the Chair say he shares completely the point of view of counsel. He recognizes also the right of Senator McClellan to propound the questions. The Chair thinks he should advise the witness of his position, although he has able counsel to do that. He has the directive. The Chair is not going to insist that he violate the directive. The Chair believes answering the question would violate the directive. But if the witness elects to violate it, it is his responsibility not that of the Chair or the committee.

Mr. ADAMS. Mr. Chairman, I believe that I must respectfully decline to answer and to state that I feel I am bound by the directive of the President of the United States and to state further that I believe that the conclusions I would have to draw for Senator McClellan and in answering his questions would be violative of the spirit of this directive.

Senator McCLELLAN. Let me ask you another question, then, and see if this violates it. Did you act on your own responsibility, you and Secretary Stevens, prior to January the 21st in the decisions and actions you took? You can answer that.

Mr. ADAMS. Our negotiations prior to January 20th, sir, were strictly within the responsibility of the Army.

Senator McCLELLAN. The responsibility of the Secretary, you mean?

Mr. ADAMS. Yes, sir.

Senator McCLELLAN. Thereafter you decline to say because of this directive, is that correct?

Mr. ADAMS. Yes, sir. I would respectfully decline to answer, sir.

Senator McCLELLAN. Mr. Chairman, that is all.

Senator MUNDT. Senator Dirksen?

Senator Dirksen advised the Chair he had to go upstairs to help make a quorum of the Judiciary Committee. He will return. We

will hear him for questioning at the end of the cycle, if he is back by that time.

Senator JACKSON?

Senator JACKSON. Mr. Chairman, first I want to apologize for being a little late this morning. I delivered a talk at the Industrial College of the Armed Services, at the War College, at Fort McNair, at 8:30 this morning. So, for that reason, I was delayed in arriving.

Senator MUNDT. Very good.

Senator JACKSON. Mr. Chairman, I want to say at the outset, that, as a preface to a possible question to Mr. Adams, I respect the right of the President under this constitutional authority to refrain from giving information that may be requested by the Congress from time to time that would interfere with the efficient and proper operation of the executive branch of the Government.

I do believe, however, that in this situation we have before us the fact that the Secretary of the Army in his testimony, if my memory serves me correctly, did make reference from time to time to conversations and discussions that he had with other people in the executive branch who were not necessarily principals to this controversy.

I think, very clearly, that if it were in our power as a court, we would say that the President and the executive branch has waived its right to object insofar as it relates to this specific subject matter. I am fully aware, however, that it is entirely within the discretion of the President of the United States under the Constitution, to withhold this information if he so desires.

I conscientiously believe, Mr. Chairman, that he may not be using his discretion wisely in this situation. I believe it fair to say that the principals to this controversy should have been directed not to give this information prior to their taking the witness stand. It seems rather unique that we get this letter—what is the date—May 17, today, when we are well along in the hearings.

I think that any such directive should have been issued at the outset. It seems manifestly unfair to me, and I believe it may be manifestly unfair to all the principals to this controversy, including Mr. Adams and the Secretary of the Army, not to be able to tell the whole story when part of the story is in the record.

The committee is in a dilemma of passing on testimony that is incomplete. I think, if I may humbly submit that the executive branch is doing a great injustice to this committee and to all of the principals to this controversy by exercising the power which the President has, very late in the proceedings.

I think it is a bit difficult to explain to the American people why it is necessary to invoke constitutional rights at a stage of the proceedings where, according to the directive, the constitutional rights of the President have already been invaded without any objection until a certain incident got a lot of publicity.

I assume, Mr. Chairman, that it would be impossible for me to put any questions to Mr. Adams that he could answer. I think there should be someone from the executive branch, maybe the Secretary of Defense, to explain why this letter was issued on May 17 and not prior to the hearing. I hope that will not be construed as an invasion of the President's right to withhold information he deems appropriate to the running of his branch of the Government. I deeply respect

the right of the President under the doctrine of separation of powers to do that which has been outlined in the long series of precedents which date, I believe, from Washington through Truman. But I do sincerely believe that there has been a bad abuse of that discretion in this situation. I think it may result in more injustice than it will in aiding any constitutional doctrine that the President finds necessary to invoke at this time.

Senator MUNDT. I take it that was not a question directed to the witness.

Senator JACKSON. No. I can ask questions, but I am not going to take up any more time. I do believe, Mr. Chairman, the record should be made clear on this point. I am fearful of the injustices that will inevitably flow from this situation.

Senator MUNDT. Senator Potter?

Senator POTTER. Mr. Chairman, this controversy has run head-on into that twilight zone defined or implied under the doctrine of separation of powers between the legislative branch of the Government and the executive branch. The location of this zone has been a controversial matter throughout our history, whether the issue was an invasion of the executive branch by the legislative branch of our Government or a question of the executive branch hindering the due functions of the legislative branch of the Government.

I feel that as a congressional committee we would have no right, for example, to subpoena a member of the President's Cabinet and have him reveal to us what took place in a Cabinet meeting, what various members of the Cabinet had to say. I don't know, Mr. Chairman, whether the high-level meeting that took place in the office of the Attorney General falls in that category or not. That is something that will have to be decided, I assume, in one of our executive sessions.

I do feel that the committee has a right to know whether the decision to make public the document now known as the Chronological Order of Events was taken on behalf of the Secretary of the Army, Mr. Stevens, and Mr. Adams, the two principals on that side of the controversy, or whether it was a directive from a higher level.

I would regret to have the Secretary of the Army, Mr. Stevens, and Mr. Adams, the Counsel for the Army, used as whipping boys when they were ordered to carry out a procedure which was the responsibility of a higher office.

I think it is a very serious decision that we of the committee have to make, and I would hope that we can continue the hearing this morning without prying into that twilight zone or forcing the witness to make decisions which it would be most difficult for him to make when he has an order signed by the President on the one hand, and he is under oath to tell the truth before this committee on the other, which makes his position most untenable.

I think in order for the committee to treat the witnesses in all fairness, we should make our own decision as to what questions are proper, what questions he can answer without violation of the order of the Chief Executive.

That is all I have, Mr. Chairman.

Senator MUNDT. I take it that was not a question.

The Chair sincerely hopes that at least after this first 10-minute round, my colleagues will once again refrain from these long comments

and engage only in questioning the witness, because otherwise we are going to continue these hearings interminably.

The Chair recognizes he cannot control the situation. He can simply endeavor to persuade his colleagues to desist.

Senator SYMINGTON?

Senator POTTER. We will revise and extend.

Senator SYMINGTON. Mr. Chairman, in the letter, which I have now read briefly, from the President, it says:

Throughout our history the President has withheld information whenever he found that what was sought was confidential or that its disclosure would be incompatible with the public interest or jeopardize the safety of the Nation.

Mr. Chairman, this is a grave word and those are fundamental words. I would like to say here that I have great respect for the problems of the President of the United States, and also for him personally.

Mr. Adams, I would like to ask you two questions which I trust are in order; and if they are not, then objection can be made and sustained.

The first question is: Why did you bring up these names voluntarily in your testimony?

Mr. ADAMS. Sir, I had no instructions that I could not bring them up.

Senator SYMINGTON. The second question is, Did anybody in the conference on January 21 know that you were going to bring these names up?

Mr. JENKINS. Mr. Chairman.

Senator MUNDT. Counsel Jenkins.

Mr. JENKINS. Mr. Chairman, with all due deference to the distinguished Senator from Missouri, Mr. Adams is now being asked a question which would elicit certainly some information, some fact with reference to the meeting with the executive officers on January 21. He is being asked now whether or not they knew or any member present knew that he would gratuitously mention their names in giving his testimony before this committee. That would elicit from Mr. Adams a fact that occurred at that conference and I respectfully suggest, Mr. Chairman, that it is an improper question in that it would require Mr. Adams to impinge upon the Presidential direction of this date.

Senator SYMINGTON. Mr. Chairman, one of the rewards of these distressing hearings has been an opportunity to get to know this distinguished son of Tennessee, and if that is the way he feels about it, I will withdraw the question.

I would like to say, however, that I deeply respect the chairman's position. I trust he will practice what he preaches about making talks. I would like to point out to him that if these names had not been voluntarily brought up by the witness, this subject would never have been dwelled on at all.

Now, Mr. Adams, I have some questions here that I would like to ask with respect to the Loyalty Review Board. As I understand your testimony, the Army had no objections to the subcommittee investigating acts of graft or any personal dishonesty on the part of members of the Loyalty Review Board of the Army; is that right?

Mr. ADAMS. No, we could not, sir, object to interrogating individuals about matters of that sort.

Senator SYMINGTON. What did you object to?

Mr. ADAMS. On the occasion when this developed the indications to me were that this was just the first increment of the entire Loyalty Board. As I have testified before, sir, the matter had been rather a subsurface problem which I had reason to believe might sooner or later become the principal issue, and when these individuals were called and I was told that they were to be interrogated on January 19, I think the date was, or some time thereabouts, I instructed the members of the Board that if they received subpoenas—I did not instruct them not to go. I instructed all the members of the Board—I don't isolate this meeting exactly—if they received subpoenas they were to make contact with me because I as yet didn't know whether or not they would have to respond. My plan was to accompany any of them to any interrogations so that I could instruct them as to what matters under existing regulations and orders they might not answer. But when the call came to me on the morning of the 19th asking for these names, I did not transmit the request to the 5 or 6 individuals who were involved, but I came myself, and it was during the afternoon when they were supposed to appear that Senator McCarthy first made me aware of the fact that he wished to interrogate these people about graft and corruption in their personal discharge of their official duties.

That did not change my opinion of the fact that this still remained the first increment of the 25 or 26 who probably would be called within the next few weeks. It was for that reason that I undertook to establish the position.

Senator SYMINGTON. Mr. Adams, you suppose that anyone has derogatory information relating to the honesty of a member of the Loyalty Review Board. What does the Army think he should do with that information?

Mr. ADAMS. Do you mean supposing one civil servant has derogatory information about another civil servant?

Senator SYMINGTON. May I repeat the question and would you answer it instead of asking me?

Mr. ADAMS. I don't know who you mean by "someone." That is the reason I asked you the question.

Senator MUNDT. Would you like the question reread?

Senator SYMINGTON. No. I will change it and say "anyone." I don't believe I did change it. Suppose anyone has derogatory information relating to the honesty of a member of the Loyalty Review Board. What does the Army think that he, anyone, should do with that information?

Mr. ADAMS. Bring it to the attention of the Army.

Senator SYMINGTON. How?

Mr. ADAMS. Well, if he is a member of the Army, by memorandum to his superior. If he is outside of the Army by a communication to the Secretary of the Army or to a responsible official of the Army.

Senator SYMINGTON. My next question is, if you received any such derogatory information about a member of the Loyalty Board or if it were received in your office, what would you do?

Mr. ADAMS. I would bring it immediately to the attention of the Security Division of G-2 of the Army, which I have had occasion to do on one or two occasions in the last 6 months.

Senator SYMINGTON. Is it then the Army's opinion that the responsibility to see that all members of the loyalty review board are honora-



ble and honest men, and so conduct themselves, lies with the Army and the Department of Defense?

Mr. ADAMS. Yes, sir.

Senator SYMINGTON. To whom are the members of the loyalty review board accountable?

Mr. ADAMS. For their performance as members of the loyalty security board, sir, they are accountable to the Secretary of the Army.

Senator SYMINGTON. Would you agree that the only way in which these loyalty review boards can retain their independence and do justice to the persons concerned is to have them specifically responsible to someone?

Mr. ADAMS. Very definitely, sir.

Senator SYMINGTON. Has anyone communicated to the Army any derogatory information relating to graft or dishonest acts, on the part of any members of the loyalty review boards in question, and, if so, who and when?

Mr. ADAMS. With reference to the individual to whom we have referred earlier in this hearing as Mr. X, subsequent to the time that he was interrogated, the transcript of the executive sessions concerning his questions and answers was given to the Army by the subcommittee.

Senator SYMINGTON. Was there any graft or dishonesty or any dishonesty including graft, that resulted from that?

Mr. ADAMS. To my recollection, sir, no.

Senator SYMINGTON. If there is anything in error with respect to your last answer, would you check that and let us know?

Mr. ADAMS. Yes, sir. I think I have recently read the testimony with reference to that individual, and his interrogations was directed toward his associations, not graft and corruption, but whether or not he had associations with people of a Communist leaning.

Senator SYMINGTON. If there is any such derogatory information on him or on anyone else on a loyalty review board, what would the Army have done?

Mr. ADAMS. Well, I can't speak for the Army prior to October 1, sir. But when I was there, or since I have been there, which is about 7 months, although there is no announced policy, it is very strongly-- it is a very strongly held opinion by the officials whose responsibilities include selecting panels and selecting people for participation in the loyalty board, that immediately on receipt of derogatory information, either of a loyalty security nature or having to do with graft or corruption, the individual should be immediately taken from the loyalty board and if the charges are of a serious nature, he also, additionally, should have whatever security clearance he has lifted, suspended.

Senator SYMINGTON. You are going far afield, I think, in answer to my question.

Mr. ADAMS. I beg your pardon.

Senator SYMINGTON. I asked you if the Army had received any such derogatory information with respect to graft or any dishonesty, what would the Army do with respect to that member of the loyalty board. Can you give me a short answer to that?

Mr. ADAMS. I think, sir, they would relieve him from the loyalty board. If the charges were serious, they would suspend him and at the same time an immediate investigation of the charges would be undertaken by proper authorities.

Senator SYMINGTON. I thank you. Now, Mr. Adams, did the Army attempt to persuade members of this committee not to subpoena the membership of the loyalty review board in question?

Mr. ADAMS. Read the question, again, sir.

Senator SYMINGTON. Did the Army attempt to persuade the members of this committee not to subpoena the membership of the loyalty review board in question?

Mr. Chairman, I understand my time is up. May I have an answer to this question?

Senator MUNDT. You may.

Mr. JENKINS. Incidentally, Mr. Chairman, that calls for a yes or no answer, apparently. Is that what you want, Senator?

Senator SYMINGTON. I would like as short an answer as possible, Mr. Counsel, that gives the facts.

Mr. ADAMS. I think, sir, that my previous testimony has been that I did call on certain members of this committee and that I did ask that these individuals not be subpoenaed.

Senator SYMINGTON. Mr. Chairman, I have a couple of other questions. I will await my turn.

Senator MUNDT. Senator Dworshak?

Senator DWORSHAK. No questions.

Senator MUNDT. Mr. Welch?

Mr. WELCH. No questions.

Senator MUNDT. Senator McCarthy or Mr. Cohn.

Senator MCCARTHY. Mr. Chairman, we have this morning a most unexpected and most unusual development. I don't know whether any further questioning of Mr. Adams will be of any benefit. We find now that Mr. Adams was in a conference with the Ambassador to the United Nations, with the Attorney General, the Deputy Attorney General, that they were the ones, according to Mr. Adams' indications, who instigated the charges against Mr. Carr and Mr. Cohn. We find now the charges against Mr. Carr were a complete fraud upon the committee, that the Army's case is in and there is no evidence against Mr. Carr.

I frankly thought all along Mr. Adams and Mr. Hensel were the people who had instigated this. Now there is no way of knowing who did. There is no way of checking motives. We have the attorney general who was present at that conference ruling upon what documents can be admitted in evidence, a most unusual ruling this morning, in which he says that a document is not authentic but verbatim. I don't quite follow that.

We asked what portions of this could be made available. Obviously there are portions having nothing to do with security but would be extremely embarrassing to those charged with security.

I would like, Mr. Chairman, to have a 5- or 10-minute recess to decide, or to conferr with Mr. Carr and Mr. Cohn to see what we should do under this unusual situation in which we can only hear the evidence about that conference which might be damaging to Mr. Cohn, Mr. Carr and myself, and suddenly, halfway through the testimony we cannot get the complete story.

I would like, Mr. Chairman, to have about a 5-minute recess to determine what action I should take in view of this unprecedented, completely unusual, almost unbelievable situation we are confronted with this morning.

May I have a 5-minute recess to consult with Mr. Cohn and Mr. Carr?

Senator MUNDT. I think that is a fair request. It was an unexpected and an unanticipated development. We will declare a 5-minute recess and return.

(Brief recess.)

Senator MUNDT. The committee will please come to order.

We will resume the business of the hearing. At the time of the recess, Senator McCarthy had the floor under the 10-minute rule. The Chair will recognize Senator McCarthy or Mr. Cohn.

Senator McCARTHY. Mr. Chairman, I must admit that I am somewhat at a loss as to know what to do at the moment. One of the subjects of this inquiry is to find out who was responsible for succeeding in calling off the hearing of Communist infiltration in Government. That the hearings have been called off, no one can question. I fear that maybe in my mind I was doing an injustice, possibly, to Mr. Adams and Mr. Hensel.

I strongly felt all along that they were the men responsible for it. At this point, I find out there is no way of ever getting at the truth, because we do find that the charges were conceived, instigated, at a meeting which was testified to by Mr. Adams.

Now for some fantastically strange reason, the iron curtain is pulled down so we can't tell what happened at that meeting. I don't think the President is responsible for this. I don't think his judgment is that bad, Mr. Chairman.

There is no reason why any one should be afraid of the facts, of the truth, that came out of that meeting. It is a very important meeting. It doesn't have to do with security matters. It doesn't have to do with national security. It merely has to do with why these charges were filed.

We find now that admittedly the charges against Mr. Carr were a complete fraud upon the committee. The case of Mr. Adams and Mr. Stevens is in. They admit they have no evidence against Mr. Carr.

Last week I couldn't understand why Mr. Welch and Mr. Adams would not agree to withdraw their charges against Mr. Carr, very serious charges. I find now that maybe they were not free agents. I don't know.

At that meeting, there was one individual who was not a member of the White House staff. He was confirmed by the Senate to a position with the U. N., Ambassador to the U. N. If he were there as the emissary of the President, if he will testify under oath or give an affidavit that he was there representing the President—I frankly would hesitate in insisting upon calling him, but I don't believe that that can be established. That is not his function. The question is how far can—I am not talking about the present occupant in the White House. But we have a tremendously important question here, Mr. Chairman. That is, How far can the President go? Who all can he order not to testify? If he can order the Ambassador to the U. N. not to testify about something having nothing to do with the U. N., but a deliberate smear against my staff, then any President—and we don't know who will be President in 1956, 1960, 1964—but any President [laughter]—I won't repeat that. Any President can, by an Executive order, keep the facts from the American people.

As I say, I don't believe that this is the result of President Eisenhower's own personal thinking. I am sure if he knew what this was all about, that he would not sign an order saying that you can't tell the Senate committee what went on when they cooked up those charges against Mr. Cohn, Mr. Carr, and myself.

Mr. Chairman, there is also another very important aspect of this. We find that the Deputy Attorney General, who I know wrote the letter the other day—I don't know about the one today—was one of the individuals who advised Mr. Adams to write out these charges. The Attorney General and his Deputy must every day pass upon questions, questions of evidence. They must ultimately decide who is lying. The testimony will be completely contradictory here. There is no question about that. Somebody will be lying. I think it is unheard of that you have an Attorney General and a Deputy Attorney General calling on a smear like this, if they did. If they did not, they should be down here telling us they did not. The evidence now is that they did. And then have them passing upon all of the important questions.

Mr. Chairman, may I say that it will be completely impossible for me to question the witness now until the committee meets and determines what the ruling will be, whether, for example, individuals not connected with the White House, like Mr. Lodge, and others, are exempt from coming down here and telling us the truth merely because the President says they should not come.

If the President can order Mr. Lodge, for example, who has nothing to do with the White House as far as we know, to seal his lips, then the President can order any witness we have.

We have heard the case of Mr. Stevens and Mr. Adams. We find, if you will pardon me for some slight repetition here, Mr. Chairman, we find they have no case at all against Mr. Carr except that he gave Mr. Adams friendly advice. We find that Mr. Adams said Saturday—after all the testimony was in, I said, "What did Mr. Cohn do that was wrong?" The only thing that he did except talk, according to Adams, was to fail to persuade me to call off the subpoenas of the loyalty board.

Now we are getting down to the meat of the case, Mr. Chairman, and that is, who was responsible for the issuance of the smear that has held this committee up for weeks and weeks and weeks, and has allowed Communists to continue in our defense plants, Mr. Chairman, handling top-secret material, as I said before, with a razor poised over the jugular vein of this Nation? Who is responsible for keeping all these Army officers down here and all the Senators tied up while the world is going up in flames?

I do think, Mr. Chairman, that we should go into executive session. I must have a ruling as to what will be behind an iron curtain and what facts we can bring out before I can intelligently question the witnesses. I do think that someone, for his own benefit, should contact the President immediately and point out to him, perhaps, that he and I and many of us campaigned and promised the American people that if they would remove our Democrat friends from the control of this Government, then we would no longer engage in Government by secrecy, whitewash and coverup.

I think that these facts should be brought to the President, because the American people will not stand for such as this, Mr. Chairman. They will not stand for a coverup half-way through a hearing.

I have asked, Mr. Chairman, that we dispose of this without these lengthy hearings. That was turned down, turned down by the representative of the Executive. Once it is turned down, I say let's go through it and lay all the facts upon the table. We can't lay the facts upon the table if we are going to draw an iron curtain when we are half-way through the hearings.

Mr. Chairman, I would like to ask for an executive session, a meeting of the committee, so I will know just to what extent the committee is going to honor this order or any other order like it.

SENATOR POTTER. Mr. Chairman, I move that we recess until tomorrow morning at 10 o'clock, and in the meantime that we have an executive session to take up the controversy which is now in dispute.

SENATOR McCLELLAN. Mr. Chairman, I would like to be heard on the motion.

SENATOR MUNDT. Senator McClellan?

SENATOR McCLELLAN. I think in view of the fact that I asked some questions trying to place the responsibility, I should make my position clear at this time before this motion is passed on.

For the present at least, I am not disagreeing with the Executive directive with respect to conversations that may have taken place at this meeting. The President may be within his rights to say that you cannot inquire into how a decision was arrived at in the executive branch of the Government at the President's level. But I do not agree—I wholly disagree, and I shall insist upon making this record clear with respect to what was the result of the decision made at that time, whether responsibility shifted from the Secretary of the Army to higher authorities. That we are entitled to know, because unless we can get that information, we will not have the evidence here upon which to make a decision that will place the responsibility.

If the Secretary is acting under orders from higher authority, the Secretary cannot be censured for carrying out those orders. Without regard to how the decision was arrived at, if a decision was made at that time, this committee is entitled to know it and entitled to know where the responsibility lies for what occurred thereafter in carrying out that decision.

I shall ask at the executive hearing, when it is held, Mr. Chairman, that this committee determine whether we are going to insist on answers to those questions as to the result of the conference, and not how the decision was arrived at.

SENATOR MUNDT. Is there a second to the motion made by the Senator from Michigan?

SENATOR SYMINGTON. Mr. Chairman, I will oppose that motion because in my opinion it is the duty of this committee to get the truth. If it cannot get all the truth, then it is still the duty of the committee to get as much of the truth as possible. I do not believe that the hearing should be recessed or postponed. I believe that the hearing should proceed at the same time that these problems are discussed and adjudicated upon.

Therefore, Mr. Chairman, I move—it is 10 minutes of 12—as a substitute motion, that we adjourn and reconvene at 2 o'clock, or recess and reconvene at 2 o'clock.

SENATOR MUNDT. The attention of the Chair was temporarily diverted. Are you suggesting that we simply recess now, Senator Symington, and not have an executive session, and meet at 2?

Senator SYMINGTON. I didn't say that, Mr. Chairman. I said instead of recessing until tomorrow, that now we recess and reconvene at 2 o'clock this afternoon in the normal procedure, so that we proceed with these hearings—correction. My distinguished colleague, the senior Senator from Arkansas, suggests that we make it 2:30, in order that we have full time for an executive hearing. I would modify my substitute motion to that extent, Mr. Chairman.

Senator McCLELLAN. I second the substitute motion.

Senator McCARTHY. Could I make a suggestion, Senator Symington?

Senator MUNDT. Let the Chair report for the record that the substitute motion as made by Senator Symington has been seconded by Senator McClellan.

Senator McCARTHY. Will Senator Symington yield for a minute?

Senator SYMINGTON. I will be glad to.

Senator McCARTHY. Instead of making that 2:30, I wonder if you won't make your substitute motion 3 o'clock, because it will take us some time to thresh out these problems. I think we should give ourselves sufficient time.

Senator SYMINGTON. Mr. Chairman, in an effort to extend every consideration possible to the junior Senator from Wisconsin, I will now further revise my substitute motion and recommend that we continue, that we recess until 3 o'clock this afternoon.

Senator MUNDT. Is the amendment satisfactory to the seconder?

Senator McCLELLAN. I accept the amendment.

Senator POTTER. Mr. Chairman, I think this is a major question which has to be discussed. I feel that it would be foolhardy for us to walk into this accidentally. I think—I know, as one member of the committee, it is a serious question. Rather than to set a time limit that we meet at 2:30 or 3 o'clock, there is no need of our coming back here and meeting until this question has been resolved. So I say, I don't care whether it is 3 o'clock or tomorrow morning, but I think the main question is to resolve this controversy. So I would like to suggest that we recess now, have an executive session, and come back at the call of the Chair after the decision has been made by the committee.

Senator SYMINGTON. Mr. Chairman, may I speak to that? I do not agree with Senator Potter. I believe that these hearings shall go on and should go on regardless of whether this matter is adjudicated to the satisfaction of the committee or anybody else. Therefore, the motion which has been moved and seconded I believe is now before the committee.

Senator MUNDT. Is there any further discussion?

As the Chair understands the motion—and he will repeat it as best he can and call for a vote if there is no further discussion—it is that we recess now and reconvene at 3 o'clock, and that the Chair call an executive session during the interim for the purpose of discussing the situation which has arisen with regard to the executive order and the testimony of Mr. Adams.

Is there any further discussion? Are you ready for the vote?

May the Chair say before the vote that if it prevails, he will call the executive session in room 357.

Those in favor of the motion made by Senator Symington and seconded by Senator McClellan, will signify by—Do you want a rollcall vote?

Very well, we will have a rollcall vote.

Senator McClellan?

Senator McCLELLAN. Aye.

Senator MUNDT. Senator Dirksen?

Senator DIRKSEN. Aye.

Senator MUNDT. Senator Jackson?

Senator JACKSON. Aye.

Senator MUNDT. Senator Potter?

Senator POTTER. No.

Senator MUNDT. Senator Symington?

Senator SYMINGTON. Aye.

Senator MUNDT. Senator Dworshak?

Senator DWORSHAK. Aye.

Senator MUNDT. The Chair votes "aye."

The motion prevails. We will meet at 1:30 in room 357. We will reconvene at 3 o'clock here.

(Whereupon, at 11:55 a. m. the committee was recessed, to reconvene at 3 p. m. the same day.)

# APPENDIX

## EXHIBITS

No. 19 (A)

UNITED STATES SENATE,  
Washington, D. C., May 10, 1954.

HON. HERBERT BROWNELL, Jr.,  
*United States Attorney General,  
Department of Justice, Washington 25, D. C.*

DEAR HERB: This letter is with further regard to our recent exchange of correspondence whereby in a communication dated May 6, you responded to a letter I wrote you under date of May 5, soliciting your opinion in connection with a 15-page interdepartmental memorandum dated January 26, 1951, from John Edgar Hoover to Gen. A. R. Bolling, and also a 2¼-page letter dated January 26, 1951, addressed to Major General Bolling and closing with the typewritten reproduction of the name "J. Edgar Hoover."

In your letter of May 6, you gave it as your opinion that it would not be in the public interest to enter as an exhibit in our current hearings either of these 2 documents. You are aware, I am sure, of the position taken by Senator McCarthy before our committee in which he held that it would not violate the public interest to include as an exhibit the 2¼-page document, and at which time he suggested the possibility of calling you before our subcommittee in executive session for the purpose of ascertaining precisely why you felt the disclosure of the contents in the 2¼-page letter would not be in the public interest. Since you are receiving daily transcriptions of our hearings, you undoubtedly have also had your attention called to the suggestion of Senator McClellan that if you were to be called to testify on this point, it should be in public session rather than in private session. Senator McClellan has also asked me privately to state in this letter that if you are to be called, he would like to request that you bring J. Edgar Hoover with you at the time of such a meeting.

At a meeting of the subcommittee Friday afternoon, however, it was decided before any action of any kind was taken on Senator McCarthy's suggestion that I should write you this letter again conveying to you the 2¼-page document in question together with the following request:

Would it be possible for you to authorize or clear for use as an exhibit before our subcommittee any of the paragraphs or portions of the enclosed 2¼-page document? It has occurred to some members of the subcommittee that the fact the 2¼-page document may contain the names of some of those still under investigation or being used as informants, could be the basis on which you requested the contents be not divulged. If so, perhaps such names could be deleted and other portions of the document released.

Will you please write me your reaction to this request and if you feel it is against the best security interest of the United States to permit any portions at all of the 2¼-page document to be used as an exhibit before our subcommittee, I am sure it will be helpful to us if you will give your specific reasons for making such a determination. We, of course, do not want to make public anything which it is deemed would be injurious to our national interest to disclose, but in our search for truth in the current hearings, on the other hand, we would like to have available for our consideration every fact and document which can be included in our record without doing violence to essential security considerations.

We would appreciate a reply as soon as possible.

With best wishes and kindest personal regards, I am

Cordially yours,

KARL E. MUNDT, *United States Senator.*



No. 20 (b)

## MEMORANDUM

For: The President.

From: The Attorney General.

One of the chief merits of the American system of written constitutional law is that all the powers entrusted to the Government are divided into three great departments, the executive, the legislative, and the judicial. It is essential to the successful working of this system that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall be limited to the exercise of the powers appropriate to its own department and no other. The doctrine of separation of powers was adopted to preclude the exercise of arbitrary power and to save the people from autocracy.

This fundamental principle was fully recognized by our first President, George Washington, as early as 1796 when he said: " \* \* \* it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved \* \* \* ". In his Farewell Address, President Washington again cautioned strongly against the danger of encroachment by one department into the domain of another as leading to despotism. This principle has received steadfast adherence throughout the many years of our history and growth. More than ever, it is our duty today to heed these words if our country is to retain its place as a leader among the free nations of the world.

For over 150 years—almost from the time that the American form of government was created by the adoption of the Constitution—our Presidents have established, by precedent, that they and members of their Cabinet and other heads of executive departments have an undoubted privilege and discretion to keep confidential, in the public interest, papers and information which require secrecy. American history abounds in countless illustrations of the refusal, on occasion, by the President and heads of departments to furnish papers to Congress, or its committees, for reasons of public policy. The messages of our past Presidents reveal that almost every one of them found it necessary to inform Congress of his constitutional duty to execute the office of President, and, in furtherance of that duty, to withhold information and papers for the public good.

Nor are the instances lacking where the aid of a court was sought in vain to obtain information or papers from a President and the heads of departments. Courts have uniformly held that the President and the heads of departments have an uncontrolled discretion to withhold the information and papers in the public interest; they will not interfere with the exercise of that discretion, and that Congress has not the power, as one of the three great branches of the Government, to subject the executive branch to its will any more than the executive branch may impose its unrestrained will upon the Congress.

## PRESIDENT WASHINGTON'S ADMINISTRATION

In March 1792, the House of Representatives passed the following resolution: "*Resolved*, That a committee be appointed to inquire into the causes of the failure of the late expedition under Major General St. Clair; and that the said committee be empowered to call for such persons, papers, and records, as may be necessary to assist their inquiries" (3 Annals of Congress, p. 493).

This was the first time that a committee of Congress was appointed to look into a matter which involved the executive branch of the Government. The expedition of General St. Clair was under the direction of the Secretary of War. The expenditures connected therewith came under the Secretary of the Treasury. The House based its right to investigate on its control of the expenditures of public moneys. It appears that the Secretaries of War and the Treasury appeared before the committee. However, when the committee was bold enough to ask the President for the papers pertaining to the General St. Clair campaign, President Washington called a meeting of his Cabinet (Binkley, *President and Congress* pp. 40-41).

Thomas Jefferson, as Secretary of State, reports what took place at that meeting. Besides Jefferson, Alexander Hamilton, Henry Knox, Secretary of War, and Edmond Randolph, the Attorney General, were present. The committee had first written to Knox for the original letters, instructions, etc., to

General St. Clair. President Washington stated that he had called his Cabinet members together, because it was the first example of a demand on the Executive for papers, and he wished that so far as it should become a precedent, it should be rightly conducted. The President readily admitted that he did not doubt the propriety of what the House was doing, but he could not conceive that there might be papers of so secret a nature that they ought not to be given up. Washington and his Cabinet came to the unanimous conclusion:

"First, that the House was an inquest, and therefore might institute inquiries. Second, that it might call for papers generally. Third, that the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public; consequently were to exercise a discretion. Fourth, that neither the committee nor House had a right to call on the head of a department, who and whose papers were under the President alone; but that the committee should instruct their chairman to move the House to address the President."

The precedent thus set by our First President and his Cabinet was followed in 1796, when President Washington was presented with a resolution of the House of Representatives which requested him to lay before the House a copy of the instructions to the Minister of the United States who negotiated the treaty with the King of Great Britain, together with the correspondence and documents relative to that treaty. Apparently it was necessary to implement the treaty with an appropriation which the House was called upon to vote. The House insisted on its right to the papers requested, as a condition to appropriating the required funds (President and Congress, Wilfred E. Binkley (1947), p. 44).

President Washington's classic reply was, in part, as follows:

"I trust that no part of my conduct has ever indicated a disposition to withhold any information which the Constitution has enjoined upon the President as a duty to give, or which could be required of him by either House of Congress as a right; and with truth I affirm that it has been, as it will continue to be while I have the honor to preside in the Government, my constant endeavor to harmonize with the other branches thereof so far as the trust delegated to me by the people of the United States and my sense of the obligation it imposes to 'preserve, protect, and defend the Constitution' will permit" (Richardson's Messages and Papers of the Presidents, vol. 1, p. 194).

Washington then went on to discuss the secrecy required in negotiations with foreign governments, and cited that as a reason for vesting the power of making treaties in the President, with the advice and consent of the Senate. He felt that to admit the House of Representatives into the treatymaking power, by reason of its constitutional duty to appropriate moneys to carry out a treaty, would be to establish a dangerous precedent. He closed his message to the House as follows:

"As, therefore, it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty; \* \* \* and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request" (Richardson's Messages and Papers of the Presidents, vol. 1, p. 196).

#### PRESIDENT JEFFERSON'S ADMINISTRATION

In January 1807, Representative Randolph introduced a resolution, as follows:

"Resolved, That the President of the United States be, and he hereby is, requested to lay before this House any information in possession of the Executive, except such as he may deem the public welfare to require not to be disclosed, touching any illegal combination of private individuals against the peace and safety of the Union, or any military expedition planned by such individuals against the territories of any Power in amity with the United States; together with the measures which the Executive has pursued and proposes to take for suppressing or defeating the same" (16 Annals of Congress (1806-07), p. 336.)

The resolution was overwhelmingly passed. The Burr conspiracy was then stirring the country. Jefferson had made it the object of a special message to Congress wherein he referred to a military expedition headed by Burr. Jefferson's reply to the resolution was a message to the Senate and House of Representatives. Jefferson brought the Congress up to date on the news which he had been receiving concerning the illegal combination of private individuals against the peace and safety of the Union. He pointed out that he had recently

received a mass of data, most of which had been obtained without the sanction of an oath so as to constitute formal and legal evidence. "It is chiefly in the form of letters, often containing such a mixture of rumors, conjectures, and suspicions as renders it difficult to sift out the real facts and inadvisable to hazard more than general outlines, strengthened by concurrent information or the particular credibility of the relator. In this state of the evidence, delivered sometimes, too, under the restriction of private confidence, neither safety nor justice will permit the exposing names, except that of the principal actor, whose guilt is placed beyond question" (Richardson's Messages and Papers of the Presidents, vol. 1, p. 412, dated January 22, 1807).

## SIMILAR ACTIONS BY PRESIDENTS JACKSON, TYLER, BUCHANAN, AND GRANT

On February 10, 1835, President Jackson sent a message to the Senate wherein he declined to comply with the Senate's resolution requesting him to communicate copies of charges which had been made to the President against the official conduct of Gideon Fitz, late Surveyor General, which caused his removal from office. The resolution stated that the information requested was necessary both in the action which it proposed to take on the nomination of a successor to Fitz, and in connection with the investigation which was then in progress by the Senate respecting the frauds in the sales of public lands.

The President declined to furnish the information. He stated that in his judgment the information related to subjects exclusively belonging to the executive department. The request therefore encroached on the constitutional powers of the Executive.

The President's message referred to many previous similar requests, which he deemed unconstitutional demands by the Senate:

"Their continued repetition imposes on me, as the representative and trustee of the American people, the painful but imperious duty of resisting to the utmost any further encroachment on the rights of the Executive" (ibid., p. 133).

The President next took up the fact that the Senate resolution had been passed in executive session, from which he was bound to presume that if the information requested by the resolution were communicated, it would be applied in secret session to the investigation of frauds in the sales of public lands. The President said that, if he were to furnish the information, the citizen whose conduct the Senate sought to impeach would lose one of his basic rights; namely, that of a public investigation in the presence of his accusers and of the witnesses against him. In addition, compliance with the resolution would subject the motives of the President, in the case of Mr. Fitz, to the review of the Senate when not sitting as judges on an impeachment; and even if such a consequence did not follow in the present case, the President feared that compliance by the Executive might thereafter be quoted as a precedent for similar and repeated applications.

"Such a result, if acquiesced in, would ultimately subject the independent constitutional action of the Executive in a matter of great national concernment to the domination and control of the Senate; \* \* \*

"I therefore decline a compliance with so much of the resolution of the Senate as requests 'copies of the charges, if any,' in relation to Mr. Fitz, and in doing so much be distinctly understood as neither affirming nor denying that any such charges were made; \* \* \* (ibid., p. 134).

One of the best reasoned precedents of a President's refusal to permit the head of a department to disclose confidential information to the House of Representatives is President Tyler's refusal to communicate to the House of Representatives the reports relative to the affairs of the Cherokee Indians and to the frauds which were alleged to have been practiced upon them. A resolution of the House of Representatives had called upon the Secretary of War to communicate to the House the reports made to the Department of War by Lieutenant Colonel Hitchcock relative to the affairs of the Cherokee Indians together with all information communicated by him concerning the frauds he was charged to investigate; also all facts in the possession of the Executive relating to the subject. The Secretary of War consulted with the President and under the latter's direction informed the House that negotiations were then pending with the Indians for settlement of their claims; in the opinion of the President and the Department, therefore, publication of the report at that time would be inconsistent with the public interest. The Secretary of War further stated in his answer to the resolution that the report sought by the House, dealing with alleged frauds which Lieutenant Colonel Hitchcock was charged to investigate, contained information which was obtained by Colonel Hitchcock by *ex parte* in-

quiries of persons whose statements were without the sanction of an oath, and which the persons implicated had had no opportunity to contradict or explain. The Secretary of War expressed the opinion that to promulgate those statements at that time would be grossly unjust to those persons, and would defeat the object of the inquiry. He also remarked that the Department had not been given at that time sufficient opportunity to pursue the investigation, to call the parties affected for explanations, or to determine on the measures proper to be taken.

The answer of the Secretary of War was not satisfactory to the Committee on Indian Affairs of the House, which claimed the right to demand from the Executive and heads of departments such information as may be in their possession relating to subjects of the deliberations of the House.

President Tyler in a message dated January 31, 1843, vigorously asserted that the House of Representatives could not exercise a right to call upon the Executive for information, even though it related to a subject of the deliberations of the House, if, by so doing, it attempted to interfere with the discretion of the Executive.

The same course of action was taken by President James Buchanan in 1860 in resisting a resolution of the House to investigate whether the President or any other officer of the Government had, by money, patronage, or other improper means, sought to influence the action of Congress for or against the passage of any law relating to the rights of any State or Territory. (See Richardson, Messages and Papers of the Presidents, vol. 5, pp. 618-619.)

In the administration of President Ulysses S. Grant the House requested the President to inform it whether any executive offices, acts, or duties, and if any, what have been performed at a distance from the seat of government established by law. It appears that the purpose of this inquiry was to embarrass the President by reason of his having spent some of the hot months at Long Branch. President Grant replied that he failed to find in the Constitution the authority given to the House of Representatives, and that the inquiry had nothing to do with legislation (Richardson, Messages and Papers of the Presidents, vol. VII, pp. 362-363).

#### PRESIDENT CLEVELAND'S ADMINISTRATION

In 1886, during President Cleveland's administration, there was an extended discussion in the Senate with reference to its relations to the Executive caused by the refusal of the Attorney General to transmit to the Senate certain documents concerning the administration of the office of the district attorney for the southern district of south Alabama, and suspension of George W. Durkin, the late incumbent. The majority of the Senate Committee on the Judiciary concluded it was entitled to know all that officially exists or takes place in any of the departments of government and that neither the President nor the head of a department could withhold official facts and information as distinguished from private and unofficial papers.

In his reply President Cleveland disclaimed any intention to withhold official papers, but he denied that papers and documents inherently private or confidential, addressed to the President or a head of a department, having reference to an act entirely executive such as the suspension of an official, were changed in their nature and become official when placed for convenience in the custody of a public department (Richardson, Messages and Papers of the Presidents, vol. 8, pp. 378-379, 381).

Challenging the attitude that because the executive departments were created by Congress the latter had any supervisory power over them, President Cleveland declared (Eberling, Congressional Investigation, p. 258).

"I do not suppose that the public offices of the United States are regulated or controlled in their relations to either House of Congress by the fact that they were created by laws enacted by themselves. It must be that these instrumentalities were created for the benefit of the people and to answer the general purposes of government under the Constitution and the laws, and that they are unencumbered by any lien in favor of either branch of Congress growing out of their construction, and unembarrassed by any obligation to the Senate as the price of their creation."

#### PRESIDENT THEODORE ROOSEVELT'S ADMINISTRATION

In 1909, during the administration of President Theodore Roosevelt, the question of the right of the President to exercise complete direction and control over heads of executive departments was raised again. At that time the Senate

passed a resolution directing the Attorney General to inform the Senate whether certain legal proceedings had been instituted against the United States Steel Corp., and, if not, the reasons for its nonaction. Request was also made for any opinion of the Attorney General, if one was written. President Theodore Roosevelt replied refusing to honor this request upon the ground that "Heads of the executive departments are subject to the Constitution, and to the laws passed by the Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever" (Congressional Record, vol. 43, pt. 1, 60th Cong., 2d sess., pp. 527-528).

When the Senate was unable to get the documents from the Attorney General, it summoned Herbert K. Smith, the head of the Bureau of Corporations, and requested the papers and documents on penalty of imprisonment for contempt. Mr. Smith reported the request to the President, who directed him to turn over to the President all the papers in the case "so that I could assist the Senate in the prosecution of its investigation." President Roosevelt then informed Senator Clark of the Judiciary Committee what had been done, that he had the papers and the only way the Senate could get them was through his impeachment. President Roosevelt also explained that some of the facts were given to the Government under the seal of secrecy and cannot be divulged, "and I will see to it that the word of this Government to the individual is kept sacred (Corwin, *The President—Office and Powers*, pp. 281, 428; Abbott, *The Letters of Archie Butt, Personal Aide to President Roosevelt*, pp. 305-306).

#### PRESIDENT COOLIDGE'S ADMINISTRATION

In 1924, during the administration of President Coolidge, the latter objected to the action of a special investigating committee appointed by the Senate to investigate the Bureau of Internal Revenue. Request was made by the committee for a list of the companies in which the Secretary of the Treasury was alleged to be interested for the purpose of investigating their tax returns. Calling this exercise of power an unwarranted intrusion, President Coolidge said:

"Whatever may be necessary for the information of the Senate or any of its committees in order to better enable them to perform their legislative or other constitutional functions ought always to be furnished willingly and expeditiously by any department. But it is recognized both by law and custom that there is certain confidential information which it would be detrimental to the public service to reveal" (68th Cong., 1st sess., Record, April 11, 1924, p. 6087).

#### PRESIDENT HOOVER'S ADMINISTRATION

A similar question arose in 1930 during the administration of President Hoover. Secretary of State Stimson refused to disclose to the chairman of the Senate Foreign Relations Committee certain confidential telegrams and letters leading up to the London Conference and the London Treaty. The committee asserted its right to have full and free access to all records touching the negotiations of the treaty, basing its right on the constitutional prerogatives of the Senate in the treaty-making process. In his message to the Senate, President Hoover pointed out that there were a great many informal statements and reports which were given to the Government in confidence. The Executive was under a duty, in order to maintain amicable relations with other nations, not to publicize all the negotiations and statements which went into the making of the treaty. He further declared that the Executive must not be guilty of a breach of trust, nor violate the invariable practice of nations. "In view of this, I believe that to further comply with the above resolution would be incompatible with the public interest" (S. Doc. 216, 71st Cong., special sess., p. 2).

#### PRESIDENT FRANKLIN D. ROOSEVELT'S ADMINISTRATION

The position was followed during the administration of President Franklin D. Roosevelt. There were many instances in which the President and his executive heads refused to make available certain information to Congress the disclosure of which was deemed to be confidential or contrary to the public interest. Merely a few need be cited:

1. Federal Bureau of Investigation records and reports were refused to congressional committees, in the public interest (40 Op. Atty. Gen. No. 8, April 30, 1941).

2. The Director of the Federal Bureau of Investigation refused to give testimony or to exhibit a copy of the President's directive requiring him, in the

Interest of national security, to refrain from testifying or from disclosing the contents of the Bureau's reports and activities (hearings, vol. 2, House, 78th Cong., Select Committee To Investigate the Federal Communications Commission (1944), p. 2337).

3. Communications between the President and the heads of departments were held to be confidential and privileged and not subject to inquiry by a committee of one of the Houses of Congress (letter dated January 22, 1944, signed "Francis Biddle, Attorney General, to Select Committee," etc.).

4. The Director of the Bureau of the Budget refused to testify and to produce the Bureau's files, pursuant to subpoena which had been served upon him, because the President had instructed him not to make public the records of the Bureau due to their confidential nature. Public interest was again invoked to prevent disclosure. (Reliance placed on Attorney General's Opinion in 40 Op. Attorney General No. 8, April 30, 1941.)

5. The Secretaries of War and Navy were directed not to deliver documents which the committee had requested, on grounds of public interest. The Secretaries, in their own judgment, refused permission to Army and Navy officers to appear and testify because they felt that it would be contrary to the public interests (hearings, Select Committee To Investigate the Federal Communications Commission, vol. 1, pp. 46, 48-68).

#### PRESIDENT TRUMAN'S ADMINISTRATION

During the Truman administration also the President adhered to the traditional Executive view that the President's discretion must govern the surrender of Executive files. Some of the major incidents during the administration of President Truman in which information, records, and files were denied to the congressional committees were as follows:

<i>Date</i>	<i>Type of document refused</i>
Mar. 4, 1948-----	FBI letter-report on Dr. Condon, Director of National Bureau of Standards, refused by Secretary of Commerce.
Mar. 15, 1948-----	President issued directive forbidding all executive departments and agencies to furnish information or reports concerning loyalty of their employees to any court or committee of Congress, unless President approves.
Mar. 1948-----	Dr. John R. Steelman, confidential adviser to the President, refused to appear before Committee on Education and Labor of the House, following the service of 2 subpoenas upon him. President directed him not to appear.
Aug. 5, 1948-----	Attorney General wrote Senator Ferguson, chairman of Senate Investigations Subcommittee, that he would not furnish letters, memorandums, and other notices which the Justice Department had furnished to other Government agencies concerning W. W. Remington.
Feb. 22, 1950-----	S. Res. 231 directing Senate subcommittee to procure State Department loyalty files was met with President Truman's refusal, following vigorous opposition of J. Edgar Hoover.
Mar. 27, 1950-----	Attorney General and Director of FBI appeared before Senate subcommittee. Mr. Hoover's historic statement of reasons for refusing to furnish raw files approved by Attorney General.
May 16, 1951-----	General Bradley refused to divulge conversations between President and his advisers to combined Senate Foreign Relations and Armed Services Committees.
Jan. 31, 1952-----	President Truman directed Secretary of State to refuse to Senate Internal Security Subcommittee the reports and views of Foreign Service officers.
Apr. 22, 1952-----	Acting Attorney General Perlman laid down procedure for complying with requests for inspection of Department of Justice files by Committee on Judiciary: Requests on open cases would not be honored. Status report will be furnished. As to closed cases, files would be made available. All FBI reports and confidential information would not be made available. As to personnel files, they are never disclosed.

<i>Date</i>	<i>Type of document refused</i>
Apr. 3, 1952-----	President Truman instructed Secretary of State to withhold from Senate Appropriations Subcommittee files on loyalty and security investigations of employees—policy to apply to all executive agencies. The names of individuals determined to be security risks would not be divulged. The voting record of members of an agency loyalty board would not be divulged.

Thus, you can see that the Presidents of the United States have withheld information of executive departments or agencies whenever it was found that the information sought was confidential or that its disclosure would be incompatible with the public interest or jeopardize the safety of the Nation. The courts, too, have held that the question whether the production of the papers was contrary to the public interest, was a matter for the Executive to determine.

By keeping the lines which separate and divide the three great branches of our Government clearly defined, no one branch has been able to encroach upon the powers of the other.

Upon this firm principle our country's strength, liberty, and democratic form of Government will continue to endure.





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