tion of Oct. 3, 1971,[5] were called up and considered as privileged business. The privileged status was not questioned when these resolutions were called up.[6]

Parliamentarian's Note: The privileged status of these resolutions could have been questioned because they directed the Secretary to furnish information to the committee rather than directly to the House. The only precedent on this point is 3 Hinds' Precedents § 1860, in which Speaker Joseph G. Cannon, of Illinois, ruled that a resolution authorizing a committee to request information from the Postmaster General and requesting him to send certain papers to the committee was privileged as a resolution of inquiry.

§ 3. Executive Branch Refusals to Provide Information

The authority of Congress to obtain information needed to legislate effectively and oversee other branches has often been challenged by the efforts of the executive branch to withhold material which that branch considers confidential, including information relating to military affairs and foreign policy. During the period prior to the "Watergate" investigations of 1973 and 1974, case law on these two potentially conflicting prerogatives developed independently.[7] Generally, such a conflict was averted, not because the executive branch complied with all requests and subpenas[8] but because the Congress

5. See § 2.4, supra, for the content of these resolutions.

6. See § 2.4, supra, for the disposition of the resolutions.

7. See, for example, *Kilbourn* v *Thompson,* 103 U.S. 168 (1881), *McGrain* v *Daugherty,* 273 U.S. 135 (1927), *Sinclair* v *United States,* 279 U.S. 263 (1929), *Watkins* v *United States,* 354 U.S. 178 (1957), *Barenblatt* v *United States,* 360 U.S. 109 (1959), for judicial recognition of legislative authority to obtain information; and *United States* v *Burr,* 25 F Cas. 187 (No. 14, 694) (cc Va. 1807); *United States* v *Reynolds,* 345 U.S. 1 (1953); and *McPhaul* v *United States,* 364 U.S. 372, 382–383 (1960), for judicial recognition of executive authority to withhold information.

8. Commenting on a survey conducted by the Senate Subcommittee on Separation of Powers for the period 1964 to 1973, Chairman Sam J. Ervin, Jr., of North Carolina, stated that the executive branch on 284 occasions refused to provide testimony or documents requested by House or Senate committees or subcommittees. These refusals were in response to oral or written requests, as distinguished from subpenas. See Senate Committee on the Judiciary, Sub-

when rebuffed did not exhaust all procedures to enforce its requests. The Watergate crisis, of course, brought the law on the subject into sharper focus.[9]

Refusals of the executive branch to provide information to the Congress, while representing only a small portion of executive responses to requests for information, have frequently occurred. Such refusals have generally been in response to informal requests for information as distinguished from a subpena. Such refusals to provide information to the Congress have been based on the following grounds:[10] (1) executive privilege, (2) alleged prerogative of office, (3) law or pretext of law, (4) classified information, (5) prejudice to litigation or investigation, (6) "inappropriateness," and, (7) other reasons, including previous submission of information, personal inconvenience, possible "adverse reaction," and claims that compliance would "hamper the agency and create adverse publicity," "create public concern," or "set a precedent."

The following are examples of instances in which the President or executive officers have refused to provide information to the Congress.

Examples of refusals by the President or executive branch officers during the administration of President Franklin D. Roosevelt include the following:[11]

—Federal Bureau of Investigation records and reports were refused to

committee on Separation of Powers, Refusals by the Executive Branch to Provide Information to the Congress 1964–1973, 93d Cong. 2d Sess. (1974), Foreword.

The only constitutional requirement relating the President's duty to provide information to Congress is article II, § 3, which provides, "He [the President] shall from time to time give to the Congress Information of the State of the Union, and recommend to their consideration such Measures as he shall judge necessary and expedient. . . ."

9. See § 4, infra, for a discussion of a suit against the President to enforce a Senate subpena.

10. These categories appear in a document of the Senate Committee on the Judiciary, Subcommittee on Separation of Powers, Refusals by the Executive Branch to Provide Information to the Congress 1964–1973, 93d Cong. 2d Sess. (1974) pp. 4–9.

11. This list, which is not exhaustive but merely illustrative, is taken from a memorandum from Attorney General Herbert Brownell to President Eisenhower and reprinted in Senate Committee on Government Operations, 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, 83d Cong. 2d Sess., hearing of May 17, 1954, pp. 1269–1275.

congressional committees, in the public interest (40 Opinions of the Attorney General [hereinafter cited as Op. A.G.] No. 8, Apr. 30, 1941).

—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 interests 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).

—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 Jan. 22, 1944, signed Francis Biddle, Attorney General, to Select Committee, etc.).

—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. A.G. No. 8, Apr. 30, 1941).

—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).

The following examples arose during the administration of President Harry S. Truman:[12]

—An FBI letter-report on Dr. Edward U. Condon, Director of National Bureau of Standards, was refused by Secretary of Commerce (Mar. 4, 1948).

—The President issued a directive forbidding all Executive departments and agencies to furnish information or reports concerning the loyalty of their employees to any court or committee of Congress, unless the President approves (Mar. 15, 1948).

—Dr. John R. Steelman, Confidential Adviser to the President, refused to appear before the Committee on Education and Labor of the House, following the service of two subpoenas upon him. The President directed him not to appear (March 1948).

—The Attorney General wrote Senator Ferguson, Chairman of the Senate Investigations Subcommittee, that he would not furnish letters, memoranda, and other notices which the Justice Department had furnished to other government agencies concerning W. W. Remington (Aug. 5, 1948).

—Senate Resolution 231 having directed a Senate subcommittee to procure State Department loyalty files, President Truman refused to permit such files to be furnished, following vigorous opposition by J. Edgar Hoover to the request (Feb. 22, 1950).

—The Attorney General and the Director of the FBI appeared before a

12. *Id.*

Senate subcommittee. Mr. Hoover's historic statement of his reasons for refusing to furnish raw files was approved by the Attorney General (Mar. 27, 1950).

—General Bradley refused to divulge conversations between the President and his advisers to the combined Senate Foreign Relations and Armed Services Committees (May 16, 1951).

—President Truman directed the Secretary of State to refuse to the Senate Internal Security Subcommittee the reports and views of foreign service officers (Jan. 31, 1952).

—Acting Attorney General Perlman laid down a procedure for complying with requests for inspection of Department of Justice files by the Committee on the Judiciary. Requests on open cases would not be honored. 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 (Apr. 22, 1952).

—President Truman instructed the Secretary of State to withhold from a Senate Appropriations Subcommittee files on loyalty and security investigations of employees—such 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 (Apr. 3, 1952).

During the administration of President Dwight D. Eisenhower, the following instances arose:[13]

—In a letter dated May 17, 1954, President Eisenhower ordered Secretary of Defense Wilson to instruct Department of Defense employees not to testify or produce documents about any executive branch communications or conversations at the Army-McCarthy hearings before the Senate Subcommittee on Permanent Investigations.

—On July 18, 1955, the General Manager of the Atomic Energy Commission refused to provide the Senate Subcommittee on Antitrust and Monopoly with papers relating to the contract between the Commission and the Mississippi Valley Generating Company (the Dixon-Yates contract) for construction of an electrical powerplant and sale of the generated power to the United States.

—In letters dated July 21, and July 26, 1955, Presidential Assistant Sherman Adams declined an invitation to appear before the Senate Subcommittee on Antitrust and Monopoly

13. This list, which is merely illustrative, was compiled from instances cited in Kramer, Robert and Marcuse, Herman, Executive Privilege—A Study of the Period 1953–1960, which contained responses to an Apr. 2, 1957, letter from the Chairman of the Senate Subcommittee on Constitutional Rights requesting agencies and departments to report instances of refusals to provide information since May 17, 1954. See also House Subcommittee on Government Information of Committee on Government Operations, Availability of Information from Federal Agencies (the First Five Years and Progress of a Study, Aug. 1959–July 1960), H. REPT. NO. 2084, 86th Cong. 2d Sess., 5–35 (1960), for a chart listing refusals.

to testify about his request for a postponement of the June 13, 1955, Securities and Exchange Commission hearing on a contract between the Atomic Energy Commission and the Mississippi Valley Generating Company (the Dixon-Yates contract) for construction of an electrical powerplant and sale of the generated power to the United States.

—On Dec. 5, 1955, before the Senate Subcommittee on Antitrust and Monopoly, the Chairman of the Atomic Energy Commission refused to answer questions relating to executive branch discussions about the contract between the Commission and the Mississippi Valley Generating Company (the Dixon-Yates contract) for construction of an electrical powerplant and sale of the generated power to the United States.

—The Administrator of the Small Business Administration, who had received a subpena duces tecum, refused to provide a subcommittee of the Senate Committee on Post Office and Civil Service with security files about a named individual on the ground that President Eisenhower's Executive Order 10450 required confidential preservation of employee security files.

—The International Cooperation Administration refused to provide the General Accounting Office with evaluation reports on American foreign assistance programs to the following countries: Taiwan and Pakistan, 1957; India, Sept. 1959; Guatemala, Mar. 1960; Bolivia, May 1960; Brazil, May 1960; Laos, Aug. 1959; Vietnam, 1959.

—On Apr. 13, 1957, the Department of Defense refused to provide the Chairman of the House Subcommittee on Public Information with investigative memoranda and a report of conversations between the Department and newsmen.

—On Jan. 12, 1957, the Department of the Army refused to provide the Chairman of the House Subcommittee on Public Information with an investigative file compiled in connection with charges of disloyalty and subversion at the Signal Corps Intelligence Agency.

—In 1956, the Chairman of the Civil Service Commission, who had received a subpena duces tecum, refused to provide the Senate Committee on Post Office and Civil Service with some but not all Federal Employees' Security Program files, documents, and records about three named individuals.

—On Nov. 12, 1956, the Department of Defense refused to provide the Chairman of the House Subcommittee on Public Information with a memorandum of the Under Secretary of the Navy relating to a discussion with an Assistant Secretary of Defense about the Department's responsibility to safeguard intradepartmental communications of an advisory and preliminary nature.

—On July 27 and Dec. 26, 1956, the Office of Defense Mobilization refused to provide the House Subcommittee on Military Operations with copies of command post exercise proclamations issued during Operation Alert 1956.

—In July 1956, the Department of the Army refused to provide the Chairman of the House Armed Services Committee with intradepartmental communications pertaining to an officer's status. A complete statement of the basis for the final decision in the matter was submitted.

—On Feb. 20, 1956, the Secretaries of Defense, State, Commerce, and the Director of the International Cooperation Administration refused to provide the Senate Permanent Investigations Subcommittee with information relating to East-West trade controls and instructed employees who might be called to testify on this matter to refuse to testify.

—On Feb. 3, 1956, the Department of the Interior refused to provide the House Subcommittee on Antitrust and Monopoly with portions of files of the National Petroleum Council which had not been made available to the legislative branch under a long established executive branch policy, as well as documents which had been received by the Council only on the condition that they be kept confidential.

—On Sept. 2–6, 1955, the Department of the Army denied requests of the Committee on House Appropriations for Inspector General's reports and Auditor General's reports. Requested summaries of all actions taken in connection with the contracts under investigation were provided.

—On Sept. 16, 1955, the Department of the Air Force refused to provide the Chairman of the Senate Preparedness Investigating Subcommittee with material derived from an Inspector General's report.

—On Feb. 2, 1956, the Department of the Air Force refused to provide the House Committee on Appropriations with Inspector General's reports and Auditor General's reports.

—On Jan. 25, 1957, the Department of the Air Force refused to provide the Chairman of the House Committee on Post Office and Civil Service with a report of the Inspector General concerning employment conditions in Okinawa. A summary of the findings of the report was submitted.

—On Jan. 17, 1956, the Department of the Air Force refused to provide the Chairman of the Senate Committee on Interstate and Foreign Commerce with information concerning the discharge of a serviceman.

—On Oct. 13, 1955, the Civil Service Commission denied a request from the Clerk of the House Committee on Un-American Activities to review the Commission's files personally.

—In June of 1955, the Department of State refused to disclose to a subcommittee of the Senate Committee on Post Office and Civil Service the personnel and security file of the Federal Employees' Security Program of a named individual.

—In May of 1955, the Atomic Energy Commission refused to provide the Joint Committee on Atomic Energy with copies of certain National Security Council documents which had been mentioned in a memorandum from the commission to the committee regarding a nuclear-powered merchant ship. A statement as to relevant presidentially approved policies contained in those documents was supplied.

—On May 12, 1955, the Department of the Interior refused to provide the House Subcommittee on Public Works and Resources with exchanges of correspondence between departmental officials regarding a departmental order which was submitted.

—On May 5, 1955, the Department of the Interior refused to provide the Subcommittee on Public Works and Resources with surnamed (initialed)

file copies of an amendment to 43 C.F.R. Part 244.

—On Feb. 8, 1955, the Department of the Army refused to provide the Chairman of the Senate Permanent Investigations Subcommittee with the Inspector General's report on Irving Peress, but did provide a detailed summary of all actions taken by the Army in the Peress case.

—On Sept. 6, 1954, the Department of the Army denied a request of the Chairman of the Senate Internal Security Subcommittee for a document entitled "Research Material for Political Intelligence Problem."

—On July 13, 1954, and Mar. 3, 1955, the Bureau of the Budget[14] denied requests for information made by the Senate Internal Security Subcommittee.

—In 1956, the Department of State refused to provide the Senate Permanent Subcommittee on Investigations with material relating to East-West trade policy. Refusals during the administration of President John F. Kennedy include the following:[15]

—On or about June 21, 1962, the Food and Drug Administration refused to provide the House Interstate and Foreign Commerce Committee with requested files on the drug MEA–29.

—On or about June 27, 1962, the State Department refused to provide the Senate Foreign Relations Committee a copy of a working paper on the "mellowing" of the Soviet Union.

—On or about Feb. 7–8, 1963, General Maxwell D. Taylor, during testimony before the House Department of Defense Appropriations Subcommittee, refused to discuss the Bay of Pigs invasion as "it would result in another highly controversial, divisive public discussion among branches of our Government which would be damaging to all parties concerned.

The following refusals occurred during the administration of President Lyndon B. Johnson:[16]

—On Apr. 4, 1968, the Department of Defense refused to provide the Senate Foreign Relations Committee a copy of the Command Control Study of the Gulf of Tonkin incident (U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Separation of Powers. *Executive Privilege: The Withholding of Information by the Executive Branch*. Hearings, 92d Cong., 1st sess. Washington: U.S. Govt. Print. Off., 1971, p. 39 [hereinafter cited as Executive Privilege]).

—On or about Sept. 18, 1968, Treasury Under Secretary Joseph W. Barr and presidential Associate Special Counsel W. DeVier Pierson refused to

14. This name has been changed to the Office of Management and Budget.

15. This list is taken from a study compiled by Harold C. Relyea, Analyst, American National Government, Government and General Research Division, Library of Congress, completed on Mar. 26, 1973, and reprinted in House Committee on Government Operations, [Unnamed] Subcommittee Hearings on Availability of Information to Congress, 93d Cong. 1st Sess. (1973), 264, 271–274. This list with refusals by White House aides excised is reprinted at 119 CONG. REC 10081, 10082, 93d Cong. 1st Sess., Mar. 28, 1973.

16. See 119 CONG. REC. 10081, 93d Cong. 1st Sess., Mar. 28, 1973.

testify before the Senate Judiciary Committee during hearings on the nomination of Associate Justice Abe Fortas to be Chief Justice.

Refusals during the administration of President Richard M. Nixon include the following:[17]

—On July 26, 1969, the Department of Defense refused to provide the five-year plan for military assistance programs to the Senate Foreign Relations Committee (Executive Privilege, p. 40).

—On or about Aug. 9, 1969, the Department of Defense refused to provide the Senate Foreign Relations Committee a copy of a defense agreement between the United States and Thailand.

—On Dec. 20, 1969, the Department of Defense refused to supply the Senate Foreign Relations Committee the "Pentagon Papers" (Executive Privilege, pp. 37–38).

—On or about Mar. 19, 1970, Secretary of Defense Melvin Laird declined an invitation to appear before the Senate Foreign Relations Committee's Disarmament Subcommittee.

—On Nov. 21, 1970, Attorney General John Mitchell refused to supply certain Federal Bureau of Investigation files to the House Intergovernmental Relations Subcommittee (*executive privilege formally invoked*).

—On Mar. 2, 1971, Department of Defense General Counsel J. Fred Buzhardt refused to release an Army investigation report on the 113th Intelligence Group to the Senate Constitutional Rights Subcommittee (Executive Privilege, pp. 402–405).

—On Apr. 10, 1971, the Department of Defense refused to supply continuous monthly reports on military operations in Southeast Asia to the Senate Foreign Relations Committee (Executive Privilege, p. 47).

—On Apr. 19, 1971, the Department of Defense refused to allow three generals to appear before the Senate Constitutional Rights Subcommittee (Id. p. 402).

—On June 9, 1971, the Department of Defense refused to release computerized surveillance records to the Senate Constitutional Rights Subcommittee and refused to agree to a subcommittee report on such records (Executive Privilege, p. 398–399).

—On Aug. 31, 1971, the Department of Defense refused to supply certain foreign military assistance plans to the Senate Foreign Relations Committee (*executive privilege formally invoked*).

—On Sept. 21, 1971, White House Director of Communications Herbert G. Klein declined to appear before the Senate Constitutional Rights Subcommittee (U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Constitutional Rights. *Freedom of the Press. Hearings*, 92d Cong., 1st and 2d sess. Washington: U.S. Govt. Print. Off., p. 1299).

—In Dec., 1971, White House Counsel John W. Dean III indicated neither Frederick Malek nor Charles Colson, both of the White House, would appear before the Senate Constitutional Rights Subcommittee during hearings regarding an F.B.I. investigation of C.B.S. reporter Daniel Schorr (Executive Privilege, p. 425).

—On Feb. 28, 1972, White House Counsel John W. Dean III indicated

17. See 119 CONG. REC. 10081, 10082, 93d Cong. 1st Sess., Mar. 28, 1973.

the unwillingness of presidential aide Henry Kissinger to appear before the Senate Foreign Relations Committee.

—On Mar. 15, 1972, the White House refused to allow the House Foreign Operations and Government Information Subcommittee to obtain country field submissions for Cambodian foreign assistance for the fiscal years 1972 and 1973 while simultaneously denying the Senate Foreign Relations Committee access to U.S.I.A. program planning papers (*executive privilege formally invoked*).

—On Mar. 20, 1972, Frank Shakespeare, Director of the United States Information Agency, refused during testimony before the Senate Foreign Relations Committee to provide copies of U.S.I.A. program planning papers withheld by a formal invocation of executive privilege on March 15.

—On or about Mar. 20, 1972, the State Department refused to supply the Senate Foreign Relations Committee a copy of "Negotiations, 1964–1968: The Half-Hearted Search for Peace in Vietnam."

—On Apr. 27, 1972, Treasury Secretary John Connally refused to testify before the Joint Economic Committee on the matter of the Emergency Loan Guarantee Board refusing to supply requested records on the Lockheed loan to the General Accounting Office.

—On Apr. 29, 1972, White House Counsel John W. Dean III indicated the unwillingness of David Young, Special Assistant to the National Security Council, to appear before the House Foreign Operations and Government Information Subcommittee (U.S. Congress. House. Committee on Government Operations. Foreign Operations and Government Information Subcommittee. *U.S. Government Information Policies and Practices—Security Classification Problems Involving Section (b)(1) of the Freedom of Information Act.* Hearings, 92d Cong., 2d sess. Washington: U.S. Govt. Print. Off., 1972, p. 2453).

—On or about June 8, 1972, Henry Ramirez, Chairman of the Cabinet Committee on Opportunities for the Spanish Speaking, refused to testify before the House Judiciary Subcommittee on Civil Rights.

—On July 26, 1972, Department of Defense Assistant General Counsel Benjamin Forman testified before the Senate Foreign Relations Committee before refusal to discuss weather modification activities in Southeast Asia.

—On Aug. 2, 1972, Henry Ramirez, Chairman of the Cabinet Committee on Opportunities for the Spanish Speaking again refused to testify before the House Judiciary Subcommittee on Civil Rights.

—On Oct. 6, 1972, Securities and Exchange Commission Chairman William J. Casey refused to turn over the Commission's investigative files on I.T.T. to the House Interstate and Foreign Commerce Committee and disclosed that the files were then in the possession of the Justice Department.

—On Oct. 12, 1972, presidential campaign manager Clark MacGregor, former Attorney General John Mitchell, White House Counsel John W. Dean III, and former Commerce Secretary Maurice Stans declined to appear before the House Banking and Currency Committee to discuss matters relating to the Watergate bugging case.

—On or about Nov. 29, 1972, White House Counsel John Wesley Dean III, presidential assistant John Ehrlichman, presidential special consultant Leonard Garment, and Bradley H. Patterson, Garment's assistant, refused to testify before the House Interior and Insular Affairs Committee during hearings on the takeover of the Bureau of Indian Affairs building in Washington.

—On Dec. 5, 1972, Housing and Urban Development Secretary George Romney declined to testify before the Joint Economic Committee on the matter of housing subsidies, saying his appearance was inappropriate in view of his announced resignation from office.

—On or about Dec. 19, 1972, the Department of Defense refused to provide the House Armed Services Committee with documents pertaining to unauthorized bombing raids of interest to the committee as part of their hearings on the firing of Gen. John D. Lavelle.

—On or about Dec. 23, 1972, presidential assistant Peter Flanigan refused to appear before the House Conservation and Natural Resources Subcommittee to discuss an anti-pollution court case against Armco Steel Company.

—On or about Jan. 1, 1973, presidential assistant Henry Kissinger and Secretary of State William Rogers declined invitations to appear before both the House Foreign Affairs and Senate Foreign Relations Committees to discuss resumed Vietnam bombings and the Paris peace talks.

—On Jan. 9, 1973, Admiral Isaac Kidd declined to testify before the Joint Economic Committee regarding his role in action involving the demotion of Gordon Rule, a Navy procurement official who testified earlier before the Committee on Litton Industries' contracts with the Defense Department and the suitability of Roy Ash, a former Litton official, as Director of the Office of Management and Budget.

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Refusals by Former Executive Branch Officials

§ 3.1 A former President and two former cabinet officers refused to appear in response to subpenas ad testificandum issued by the Committee on Un-American Activities in its investigation of their knowledge of a Federal Bureau of Investigation memorandum they had received while serving in the executive branch.

On Nov. 12 and 13, 1953,[(8)] a former President and two former cabinet officers refused to testify about their knowledge of a 1946 memorandum from the Director of the Federal Bureau of Investigation, J. Edgar Hoover, concerning alleged Communist Party affiliations of the late Harry Dexter White, who in 1946 served as Assistant Secretary of the Treasury and had been appointed by the President to the United States Mission to the International Monetary Fund.

In a Nov. 12, 1953, letter to the Chairman of the Committee on Un-American Activities, Harold H. Velde, of Illinois, former President Harry S. Truman stated that he declined to comply with the subpena to appear on Nov. 13, 1953, because he assumed that the committee sought to examine him with respect to matters which occurred during his tenure as President. He asserted that if the constitutional doctrine of separation of powers and independence of the Presidency is to have validity, it must also apply to a President after expiration of his term of office. He expressed the view that the doctrine would be destroyed and the President would become a mere arm of the legislative branch if he felt during his term that every act would be a subject of official inquiry and possible distortion for political purposes. Mr.

18. See Beck, Carl, Contempt of Congress, A Study of the Prosecutions Initiated by the Committee on Un-American Activities, 1945–1967, The Hauser Press, New Orleans, 1959, pp. 101–102.

Truman also stated that he would be happy to appear and respond to questions relating to his acts as a private citizen either before or after leaving office and unrelated to his activities as President. The committee took no further action.

Similarly, Supreme Court Associate Justice Tom C. Clark, Attorney General in 1946, refused to appear on Nov. 13, 1953, as ordered by subpena. In a letter to the Chairman of the Committee on Un-American Activities, Mr. Justice Clark cited the importance of judicial branch independence and freedom from the strife of public controversy as reasons for his refusal to appear. He offered to consider responding to any written questions, subject only to his constitutional duties.

The Governor of South Carolina, James F. Byrnes, Secretary of State in 1946, refused to appear before the committee on Nov. 13, 1953, in response to a subpena. In a telegram to the chairman, Governor Byrnes stated that he could not by appearing admit the committee's right to command a Governor to leave his state and remain in Washington until granted leave to return. Such authority, he said, would enable the legislative branch to paralyze the administration of affairs of the sovereign states. He offered to respond to written questions and invited the committee or a subcommittee to meet with him at the State House in Columbia, S.C. The committee sent a subcommittee to South Carolina.

§ 4. Litigation to Enforce a Subpena; Senate Select Committee v Nixon

A review of recent litigation to enforce congressional subpenas may help reveal the issues involved in reconciling the congressional authority to seek information with the Chief Executive's claim of right to deny access to information in some circumstances.

The stage for a historic confrontation was set when the Senate Select Committee on Presidential Campaign Activities, created on Feb. 7, 1973, by unanimous approval of Senate Resolution 60,[19] with authority to investigate and study illegal, improper, or unethical activities in connection with the 1972 Presidential campaign and to issue subpenas,[20] discovered that

19. See § 1.46, supra, and 119 CONG. REC. 3830–51, 93d Cong. 1st Sess. for a discussion of this resolution.

20. Authority to issue subpenas, originally granted by S. Res. 60, was buttressed and clarified by S. Res. 194,