Secrecy in a Free Society

Sam J. Ervin Sen.
intelligence reports that “several hundred young people who had long hair and [who would be] dressed like hippies” would take over the stage and disrupt the proceedings. He added that the Secret Service instructed the police to examine very carefully all people with long hair and beards. One of the demonstrators said later that Crutchfield was crediting them with more organization than they ever dreamed of.

Some people would deny that the Secret Service should act when the President is directly threatened. But the arbitrary actions in Charlotte show that it was more inter­esting to prevent embarrassing harm than to Mr. Nixon. Security actions were taken on a few occasions when he appeared in September.

Former Secret Service agent Rufus Youngblood, who protected President Kennedy in Dallas when Kennedy Johnson was shot, says agents today have to “Nixon men” to get anywhere. Perhaps that explains a lot.

WILLIAM ARTHUR, JR. and POLLY PADDICK

EXECUTIVE PRIVILEGE

SECRET IN A FREE SOCIETY

SEN. SAM J. ERVIN, JR.,
Chairman of the Subcommittee on Separation of Powers of the Senate Judiciary Committee

Washington, D.C.

I am alarmed, as are my colleagues in the Congress, by the increasing frequency with which the executive branch withholds from Congress information vital to its legis­lative functions. Congress’ decision-making role cannot be denied, but by the invocation of “executive privilege,” the President, in effect, excludes the legislature from meaningful participation in that process. This dangerously expanding trend toward government by secrecy negates the principle of separation of powers upon which our constitutional system is based. The assertion of executive privilege, or the power to withhold information from the legislative branch to make crucial decisions without answering to any system of formal “accountability” for the exercise of such immense power, is an alarming development every year.

Because the President has been able to act through Executive Orders without the inconvenience and restraints of Congressional authorization or delegations of power, the danger of the expansion of governmental power has been seriously eroded.

In all candor, we in the legislative branch must confess that all the time it has been our thought that the free flow of ideas and information, and the open and full disclosure of the governing process, are essential to the operation of our free society. Throughout history, rulers have imposed secrecy on their actions in order to enthrall the citizenry in bonds of ignorance. By contrast, a government whose actions are open to public discussion and whose citizens are protected by the freedoms embodied in the Constitution.

Moreover, it is clear that the invocation of executive privilege is contrary to the spirit, if not the letter, of the Freedom of Information Act (5 U.S.C. 552), which Congress passed with the express purpose of expanding the knowledge and understanding of the public of the actions of the government. While it provides for nine specific exceptions, it also requires that none of them be used “to withhold information from the public of the actions of the government.”

The asserted doctrine of executive privilege has developed, as Justice Frankfurter noted, into “a policy, a specific exceptions, it also requires that none of them be used “to withhold information from the public of the actions of the government.”

The asserted doctrine of executive privilege has developed, as Justice Frankfurter noted, into “a policy, a charac­teristic of the executive-a development that has been duly noted by numerous political and legal scholars. It has expanded the principle that the free flow of ideas and information, and the open and full disclosure of the governing process, are essential to the operation of our free society. Throughout history, rulers have imposed secrecy on their actions in order to enthrall the citizenry in bonds of ignorance. By contrast, a government whose actions are open to public discussion and whose citizens are protected by the freedoms embodied in the Constitution.

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The asserted doctrine of executive privilege has developed, as Justice Frankfurter noted, into “a policy, a specific exceptions, it also requires that none of them be used “to withholding information from the public of the actions of the government.”
The Senate Judiciary Subcommittee on Separation of Powers, of which I am chairman, was mindful of these divisions are mandatory in order to avoid the undue accretion of power which may be used to override the upper house by a paper-thin margin by which to override the upper house—251 votes—and he has no assurance of holding all 251 votes, there is no guarantee that he will be able to divide the opposition Christian Democratic Union, but that is speculation.

Brandt's best hope lies in popular support in West Germany. Older Germans remember Hitler, and educated younger Germans have some idea of what went on after 1945. In an obscure newspaper item, we noticed that among those who had nominated Willy Brandt for the Nobel Peace Prize were turned away from the public ceremony. There was no useful purpose would be served by a public report on the material—this is solely for your use in conducting your inquiry. (R. Keny Wenger, Acting General Counsel, Department of Army)

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The judgment of executive privilege or some other bureaucratic excuse for failing to reply. These rebuffs to me and the subcommittee are entitled to dictate what may appropriately be investigated and the scope of any such "appropriate" investigation.

In action, our system of government is not one of strictly separated powers, but a government based upon the concept of separate but balanced power acting along functional lines. For obvious reasons, such a system could not and does not operate in strict conformity to the underlying principle.

The founding fathers fully understood that governmental responsibility must be shared in order to make the whole fabric of government viable. If the treaties are turned down, the well-founded Soviet threat about Germany will revive in full force. Men of good will everywhere will rejoice at the honor bestowed on Willy Brandt, but its political effect remains to be seen.

The Nominator

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Pakistan: What Never Gets Said

PAUL DEUTSCHEMAN

Mr. Deutschman has been a foreign editor of Life, an official in the Marshall Plan and in AID, and a foreign correspondent covering Europe, Asia and Africa. His first novel is scheduled for publication by Dial Press next year.

There are very large aspects to the present troubles in Pakistan and the entire Indian subcontinent about which nothing is ever said. Both press coverage and public speculations concentrate on what is readily visible—the genocidal war waged by the Pakistani Army against the people of East Pakistan; the independence movement there; the terrible plight of the millions of refugees who in the past several months have crossed over into India; revelations about the possible malfeasance, stupidity or just plain bumbling bureaucracy involved with the delivery of those shiploads of military hardware; the economic aid cutoffs recently voted through Congress, etc.

At the risk of seeming to lack compassion, I think the time is long overdue to mention some of the unmentionables. They may give some clues as to what our government may well be contemplating within the closed chambers where all those top-secret papers are composed and contingency tactics mocked up. It may also reveal a possible way out of the present impasse. And if a way out is not found, the public must prepare itself for some really rude future shocks in the next few weeks.

There is, to begin, the background of unspoken emotional and psychological realities. For example:

(1) The subcontinent is beset by harsh tribal differences and enmities. At the time of partition, the two chief “warrior tribes” of the area, Punjabis and Sikhs (joint mainstays of the old British Indian Army), arrayed themselves on opposite sides and formed the mainstays of the Pakistani and Indian Armies.

Further, the Moslems of West Pakistan (fantasizing themselves as descendants of the Mogul conquerors) feel disdain for all the Hindus—those within their own borders (both “wings”), certainly, and also those in India. They make an exception, perhaps, for the Sikhs, whom they simply hate—a sentiment that is staunchly reciprocated. Further still, far down the line in subcontinental “tribal” esteem—on both sides of the borders—are the supposedly meek and energyless Bengalis. Both nations tend to disregard and look down upon their respective Bengalis, whether of Moslem or Hindu religion.

(2) The religious differences are well known, but the outside world is insufficiently aware of the crucial fact that these differences are reflected in rival philosophies of statehood. In principle, Pakistan is a theocratic state and India a secular one. In India, the Moslems are a strong and integrated minority, part of the socio-political mainstream; in Pakistan, it is not unfair to say that Hindus are a merely “tolerated” minority—as peripheral to the mainstream there as, perhaps, Jews are in Morocco or Protestants in Italy.

This difference causes certain unmentioned problems: India can barely tolerate the idea of Pakistan, based, as it is, on religion, and thus the antithesis of its own premise for sovereign existence. Pakistan, meanwhile, cannot accept for very long the idea that some of the subcontinent’s 60 million Moslems are not included within its borders—thus contradicting its premise for sovereign existence.

(3) We all “know” about the “fatalism” toward life in Asia. About the “grinding poverty”; about how the “people-hunger balance” teeters most dangerously there—the increasing production of grain and other basic foodstuffs, despite all efforts, being continuously outstripped by the increasing production of people. But unless you have personally immersed yourself in certain parts of Asia—have, for example, strolled along the back streets of Calcutta at sundown in summer time, or through downtown Dacca during the rainy season—you cannot understand how little difference there can be, truly, between life and death for so many Asians. And it is completely ironic, therefore, that the geographical cockpit of this present dispute encompasses both Calcutta and Dacca, undoubtedly the two most luxuriant cesspools of human misery on this planet.

Also, compassion aside, the East Pakistan refugees should be viewed in terms of living conditions they left behind them as well as those in which they now find themselves. We’ve seen photos of hungry, brutalized refugees living in cramped sections of sewer pipe in bare Indian fields. But we might also wish to see how the people down...