practically put the various State labor relations boards and agencies out of business. It would have compelled an overburdened National Labor Relations Board to take on more cases and thus further backlog a caseload which has not been current for years.

The Kennedy-Ives bill did nothing about organizational or racketeer picketing even when such picketing was contrary to the wishes of the collective bargaining unit concerned.

The Kennedy-Ives bill did not tighten up the inadequate secondary boycott provisions of existing law.

The Kennedy-Ives bill did nothing to ban the expenditure of union funds for partisan political purposes.

The Kennedy-Ives bill would have narrowed the definition of supervisors contained in existing law and thus force foremen into the same union-shop contract as the employees they are supposed to supervise.

Section 607 of the Kennedy-Ives bill could have been so construed as to make it a crime for an employer to give his employees a raise in pay or other benefits when such action coincided with union attempts to organize his employees.

The reporting and disclosure features of the Kennedy-Ives bill were wholly inadequate as a means of getting improper leadership and dominated stewards off the backs of the working men and women of America. The bill required that improper conduct be reported to the Secretary of Labor and then be disclosed to public view. It did not bring the power of Government action against proven improper union leadership.

The Kennedy-Ives bill did not make it mandatory that the union member be allowed to see the financial and other records of his union. All he could have was the information which his union officers reported to the Secretary of Labor and even that might be in such abbreviated form as the Secretary thought adequate.

The McClellan Rackets Investigating Committee—and I have never liked the committee's name because I think it is unfair to good unionism—recommended that there be imposed on union officials the same responsibilities in regard to union funds and property as as now generally imposed on the officials of banks and other institutions which act as repositories and administrators of trust funds.

The Kennedy-Ives bill did not impose fiduciary responsibilities on union officials in regard to the funds and the property of their membership. The Kennedy-Ives bill did not empower union members to go into State and Federal courts to sue for violations of trust by union officials charged with the care, custody, and prudent use of union funds and property.

The Kennedy-Ives bill should have been thoroughly studied in the House Committee on Education and Labor before being voted upon by the House. This important legislation never should have come up under suspension of the rules of the House. It deserved defeat.

The Myth of Executive Privilege

EXTENSION OF REMARKS
OF

HON. JOHN E. MOSS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 19, 1958

Mr. MOSS. Mr. Speaker, the President has signed into law H. R. 2767 which was passed without a dissenting vote by both Houses of Congress. The new law prevents the misuse of a 169-year-old statute which has been twisted, in recent years, into a claim of authority to refuse the public the facts about the day-to-day operation of the Federal Government.

In signing the legislation, however, the President issued the following statement:

In its consideration of this legislation the Congress has recognized that the decisionmaking and investigative processes must be protected. It is also clear from the legislative history of the bill that it is not intended to, and indeed could not, alter the existing power of the head of an executive department to keep appropriate information or papers confidential in the public interest. This power in the executive branch is inherent under the Constitution.

The President, in his statement on H. R. 2767, brought in an entirely unrelated issue—an issue which Attorney General William P. Rogers attempted to insert during both House and Senate consideration of the bill. The so-called "executive privilege" to keep information confidential "in the public interest" is not mentioned, in any way, in H. R. 2767. The President, in claiming that H. R. 2767 does not affect "executive privilege"—a valid claim since the legislation has absolutely nothing to do with that particular issue—is asserting that such a privilege does, in fact, exist. The President even asserts that this power of secrecy is "inherent under the Constitution" and seeps down to the Executive Departments. If any Constitutional "privilege" exists to keep secret the facts of government, it is certainly granted only to the President himself and certainly not to his appointees, heading offices which are not even mentioned in the Constitution.

A complete analysis of the absurdity and the dangers of this Government-wide claim of "executive privilege" has been made by Dr. Harold L. Cross, who is the Nation's leading expert on the freedom of information problem. His analysis, printed in the August issue of the Bulletin of The American Society of Newspaper Editors, effectively explodes the myth of executive privilege.

The analysis follows:

THE MYTH OF "EXECUTIVE PRIVILEGE"

(By Harold L. Cross, fol counsel for ASNE)

As Congressman GEORGE MEADER, Republican, of Michigan, pointed out recently, "It is difficult to prove that a nonexistent thing does not exist."[1] That to which he referred and of which I write is the "nonexistent, imaginary, so-called executive privilege"[2] of the nature, dimensions, and pretentious rhetoric in which it is currently advanced.

No such privilege is expressed in the Constitution or in any act of Congress or in any court decision. It is not (as some newspapermen, incautiously accepting executive officials' asseverations, are so prone to chorus) an established or well-settled principle. It has been repeatedly challenged, denied, repudiated, or refused acceptance in the Congress and in numerous court decisions, and, in addition, by lawyers whose professional competence is equal to, and whose objectivity is not less than, that of Attorneys General and by other persons whose views are entitled to at least equal respect.

BUREAUCRACY—SERVANT OR MASTER?

Congressman MEADER said: "I wonder if the American people and their elected Representatives in Congress appreciate the significance of this latest pronouncement of the executive branch of the Government (referring to a statement by Attorney General Rogers to the Senate Subcommittee on Constitutional Rights). If this is sound constitutional doctrine, then it is permissible, without amending the Constitution, for the huge executive bureaucracy we have built up to become the master, not the servant, of the people."[3]

I wonder if editors and their representatives in Washington appreciate that "if this is sound constitutional doctrine" the right of the people, the Congress, and the courts to know is a nonexistent thing whenever those in the executive branch or exercising executive functions in the so-called independent regulatory agencies created by the Congress to choose to assert this executive privilege and that freedom of information, despite anything the Congress or the Federal judiciary can do about it, thus hangs on absolute, unfettered, judicially unreviewable executive official grace, courtesy, indulgence, or discretion.

QUOTING NIXON AS REPRESENTATIVE

Happily, the existence of such a privilege is not sound constitutional doctrine; not yet at least. It is instead a mere unresolved claim by those officials to an unrestricted right of privacy.[4] It is as wide open as all outdoors.

Among those in Congress who have repudiated it is one but a heartbeat from the Presidency. Said Representative RICHARD M. NIXON:[5]

"I am now going to address myself to a second issue which is very important. The point has been made that the President of the United States has issued an order that none of this information can be released and that therefore the Congress has no right to question the judgement of the President.

"I say that that proposition cannot stand from a constitutional standpoint or on the basis of the merits for this very good reason. That would mean that the President could have arbitrarily issued an Executive order in the Meyers case, the Teapot Dome case, or in any other case denying the Congress information it needed to conduct an investigation of the executive department and the Congress would have no right to question his decision."

NO LIMIT TO POSSIBILITIES

Among the court decisions in which its acceptance was refused is one by a Federal circuit court of appeals.[6] Quoting some gentlemen who were conspicuously present when the Constitution was adopted, the opinion said:

"Moreover, we regard the recognition of such a sweeping privilege against any disclosure of the internal operation of the executive departments of the Government as contrary to a sound public policy. * * * It is but a small step to assert a privilege against any disclosure of records merely be-

Footnotes at end of speech.

cause they might prove embarrassing to Government officers. Indeed it requires no great flight of imagination to realize that if the Government's contentions in these cases were affirmed the privilege against disclosure might gradually be enlarged by executive determination until, as is the case in some nations today, it embraced the whole range of governmental activities."

MENACE NEEDS TO BE SCOTCHED

Among the numerous others who have repudiated it is Dean Wigmore in his monumental work on evidence.[7] Said he:

"But the solemn invocation in the precedents above chronicled, of a supposed inherent secrecy in all official acts and records, has commonly been only a canting appeal to fiction. It seems to lend itself naturally to mere sham and evasion. * * * But the vast extension, in modern times, of administrative laws regulating the affairs of the individual citizen, is presenting a large scope for this claim of privilege. The possibilities of such abuse are plainly latent in this supposed privilege. * * * The menace which this supposed privilege implies to individual liberty and private right will justify us in repudiating it before it is solidly entrenched in precedent."

As a barricade of secrecy against the people there are no Federal judicial precedents for the privilege. In the single reported appellate court decision on citizens' inspection of Federal nonjudicial records the privilege was not asserted or, if asserted, was ignored, while the court referred to the invoked "inalienable right of every citizen to be informed."[8] When the issue is presented for determination consideration must be given to the reach of the first, fifth, and ninth amendments.

THE PEOPLE'S RIGHT TO TRAVEL

Editors will recall what has happened to that long-asserted absolute discretion of the executive branch of the Government on the issuance and revocation of passports which, unlike executive privilege did have some vestige of support in an act of Congress and Presidential regulations in an area of foreign affairs supposedly singularly committed to the Executive. In the passport cases the Government at long last conceded that the people's right to travel has a fifth amendment aspect.[9] I refer, of course, to the liberty-due process provisions of the amendment, not to the currently familiar protection against self-incrimination.

Thanks to this fresh emphasis on liberty and due process, and to the Supreme Court's reminder that there is such a thing as the first amendment, the people's right to know acquires constitutional aspects which have been neglected too long. After all, the people's right to know can hardly be inferior to their right to travel.

COURT DECISIONS CITED

As a clamp upon the Congress the claim of executive privilege is bare of Federal judicial precedent, though the respected high courts of California, Massachusetts, and New York have rendered decisions adverse to the claim.[10] In one of these, the decision most nearly on the precise point, the Supreme Judicial Court of Massachusetts, passing upon the refusal of an official in the executive branch to produce a record thereof demanded by the Bay State senate and dealing with the express declaration on separation of powers in the bill of rights in that State's constitution, squarely rejected the doctrinaire interpretation of separation of powers relied upon to support the executive privilege claim of the Federal executive branch. The court's unanimous opinion cited, among others, three decisions of the United States Supreme Court.

Footnotes at end of speech.

FROM BURR'S TIME TO THIS

As to the claim as against the judiciary, the Federal courts from *Marbury* v. *Madison*[11] and *United States* v. *Aaron Burr*[12] in the early 1800's to *Reynolds* v. *United States*[13] in the 1950's have forthrightly asserted and, as occasion arose, exercised the judiciary's power to determine the merit of a claim of privilege against disclosing evidence relevant to issues in pending litigation. That "involves a justiciable question traditionally within the competence of the courts"[14] and, as the Supreme Court has said, "Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers."[15] In recent cases Federal courts, disregarding claims of this privilege, have directed production of records by executive departments not only in litigation involving the Government but also in that between private citizens."[16]

"LITTLE PRESIDENTS" APPEAR

Editors will understand that the issue does not involve the right (as distinguished from the privilege) of the Government to withhold records and information which actually are lawfully secret, confidential, or otherwise not subject to compulsory disclosure pursuant to valid past or future acts of the Congress or to controlling judicial decisions concerning evidentiary or testimonial privileges. Space does not permit, nor the occasion call for, stating the particulars of such records and information ranging from certain military secrets and identity of confidential informants to income-tax returns, crop reports, and many others.

Nor in its current dimensions does the claim of privilege primarily involve the extent of any possible presidential immunity from the enforcement of legal process which, aside from the holding that the President is subject to the subpena power of the courts,[17] also remains unresolved. The privilege is claimed by and in behalf of a host of Federal officeholders to whom no such immunity extends; and, naturally, it has sired little presidents who have ventured to assert presidential authority in respect of matters which, for all that appears, the President himself was quite unaware. Other officials, it should be noted, forthrightly disclaim any such power.

The claim has been advanced recently in three documents. The first of them, unsigned, undated, transmitted by Attorney General Rogers to the House Government Information Subcommittee, and consisting of 102 pages (which seems a lot for a privilege said to be well settled) is captioned: "Is a Congressional Committee Entitled to Demand and Receive Information and Papers From the President and the Heads of Departments Which They Deem Confidential in the Public Interest?"[18]

QUESTION KEEPS BOBBING UP

At long last, page 86, this pops out: "None of the foregoing cases involved the refusal by a head of a department to obey a call for papers or information. There has been no Supreme Court decision dealing squarely with that question." At intervals in later pages the question keeps bobbing up: "How is the Supreme Court likely to decide the issue concerning the withholding of confidential papers by the executive branch from Congress and its committee?" Naturally, the author knows the answer but, alas, agreement thereon falls far short of unanimity.

The second paper, the pronouncement repudiated by Congressman MEADER, is the March 6, 1958, statement of Attorney General Rogers to the Senate Subcommittee on Constitutional Rights. After referring to certain principles said to have been established by unilateral action of President Washington's Cabinet, President Tyler and other persons and quoting from opinions by official predecessors, newspaper edit and court decisions he seems to cor have a bearing, Mr. Rogers comes up at 29 with this:

"To conclude that a constitutional lege exists in the President and in thos ing in his behalf and pursuant to his tion to withhold documents and inform as against a congressional demand fo duction or testimony does not wholl pose of the problem. A further qu arises. Is the Executive or the Congr determine whether the privilege is a pirately asserted in a given case. Th no judicial precedent governing this tion."

The last sentence is correct. His pr "To conclude" is equally bare of ju precedent. He says further: "As a pra matter only the President can make t termination as to disclosure." There judicial precedent for that one either. about a determination by the Federal ciary in a government by law?

REVERTING TO M'CARTHY HEARING

The third paper is the "Memorandu Attorney General Brownell which panied the famous Army-McCarthy he letter of May 17, 1954, from President hower to Secretary of Defense Wilson emergency which certainly was sudde may have been dire. (It may be noting here as news that Mr. Rogers a 6 of his statement says "that this lett poses no barrier to the disclosure official action." There may be som awareness of this in the executive and administrative agencies.) The lege" is stated in the "Memorandu follows:[19]

"American history abounds in count lustrations of the refusal, on occasi the President and heads of departme furnish papers to Congress or its comn for reasons of public policy.

"Nor are the instances lacking whe aid of the court was sought in vain tain information or papers from the of departments. Courts have uniformi that the President and heads of depart have an uncontrolled discretion to wi information and papers in the publ terest; they will not interfere with t ercise of that discretion, and that Co has not the power, as one of the thre branches of the Government, to subj executive branch to its will any mor the executive branch may impose restrained will upon the Congress."

COLD STARES WERE EFFECTIVE

The first paragraph is substantial rect. It may be noted, however, t number of instances of refusals by h departments that stuck are not countless; that there have been a of instances in which department brought before Congress by request pena, spoke at first of this so-calle ilege and then, facing cold stares, ing they'd ne'er consent, consente quite often the reasons for refus actually well-settled rules of law rath mere subjective public policy; and th of Members of Congress who have gated the executive branch from aster that befell General St. Clair disaster that befell Pearl Harb later—have scoffed at and repudia constitutional basis for such refus that the instances of congressional in which information and papers h furnished by the President and dep heads are legion.[20]

The second paragraph is remarkab Mr. Brownell, though impliedly dis a power whereunder the executive may impose its unrestrained will u Congress, was actually claiming power. His statement would be ev

rkable if it were correct, which it t.[21] No cases are cited therefor either s statement or in the document from n he lifted it. There are no such cases. sheer assertion, as shown above, as far .e rights of Congress and the people oncerned; and, so far as withholding the courts is concerned, it is at direct ice with pertinent court holdings. ons of Attorneys General are not law.[22]

IT'S A ROYAL PREROGATIVE

executive branch as of now has no specially privileged right of privacy as st the people, their Congress or their i. The claim to one harks back to prerogative[23] and is made in a land, there is reason to believe, the people done something more than merely to e their kings. If such a privilege ought ist, let it be sought forthrightly by iment of the Constitution or in legis- by the Congress inasmuch as "The ers of this Nation entrusted the law- g powers to Congress alone in both ınd bad times. It would do no good all the historical events, the fears of and the hopes of freedom that lay be- their choice."[24] Any such privilege . depend by law on the nature and cir- ances of the record, paper, or informa- ıvolved and not upon the status (as in the executive branch or exercising ive functions) or the will or the dis- ı or the caprice of the official happen- have custody. No such servant of the should be judge in his own cause.[25]

NGRESSIONAL RECORD, House, March 10, age 3286.
d., page 3285.
d., page 3281.
Yale Law Journal 477 (Bishop, 1957).
NGRESSIONAL RECORD, House, April 22, age 4783.
nolds v. *U. S.* (192 F. 2d, 987 (3d Cir. ; reversed on other grounds, *U. S.* v. *lds* (345 U. S. 1, 73 S. Ct. 528, 97 L. Ed. A. L. R. 2d 382 (1953)). See note 15.
I Wigmore on Evidence, 3d ed., secs. 279; also earlier sections.
ited States ex. rel. Stowell v. *Deming* 19 F. 2d 697 (App. D. C. 1927)).
kwell Kent and Walter Briehl cases, States Supreme Court, June 16, 1958; a not available to writer on June 21,

nion of the Justices. 328 Mass. 2 N. E. 2d 179 (1951), and cases cited.
r. (U. S.) 137, 2 L. Ed. 60 (1803).
ırr's Trial, 182, 2 Ibid. 535.
ıtions in note 6.
nolds v. *U. S.*, cited in note 6.
'. v. *Reynolds*, cited in note 6.
ris v. *A. T. & S. F. Ry. Co.* (21 F. R. D. 57)); *Snyder* v. *U. S.* (20 F. R D. 7
66 Yale Law Journal 477 (Bishop, 61 Cornell Law Quarterly 737 (Sum- 56); 59 Yale Law Journal 1451 (Berg- Krash, 1950). See also court papers *ay* v. *U. S.*, U. S. D. C. Dist. Col., Civil No. 4422–50, where "privilege" claim tary of Army was overruled. In some ases cited the claim of privilege was ı 5 U. S. C. 22 which the Attorney has claimed to be "a legislative ex- and recognition" of the constitu- executive privilege."
's Trial, cited in Note 12.'
document also appears in 10 Federal nal 103 (Wolkinson, 1949). Its au- or was connected with the Depart- Justice. From material in it much ney General Brownell's "Memoran- ted in Note 19 was "lifted" almost word.
es from Federal Agencies to Ques- submitted by The Special Subcom- n Government Information of the ee on Government Operations, pp. 546–552; appears also in records of Army-McCarthy Senate Hearings and as an Attorney General Opinion.

[20] CONGRESSIONAL RECORD, House, March 10, 1958, pp. 3280–3286 (Meader); 39 Georgetown Law Journal 563 (Collins, 1951); 40 Harvard Law Review 153 (Landis, 1926); Committee on Government Operations, The Right to Congress to Obtain Information from the Executive and from Other Agencies of the Federal Government, April 27, 1956; Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce, Memorandum of Law, Staff Report, October 17, 1957.

[21] 66 Yale Law Journal 477 (Bishop, 1957). See also matter cited in Note 20.

[22] Cross, The People's Right to Know Legal Access to Public Records and Proceedings, pp. 23–24. The late U. S. Supreme Court Jackson, himself a former Attorney General and author of one of the Opinions often cited re "executive privilege" referred to them as "partisan advocacy" in *Youngstown Sheet & Tube Co.* v. *Sawyer* (343 U. S. 579, 649, note 17 (1952)).

[23] 59 Yale Law Journal 1451 (Berger and Krash, 1950); see also matters cited in Note 20.

[24] *Youngstown Sheet & Tube Co.* v. *Sawyer* (343 U. S. 579 (1952)).

[25] VIII Wigmore on Evidence, 3d ed., sections 2377a et seq.

Congratulations to the Junior Service League of Jersey City on Its 30th Anniversary (1928–58)

EXTENSION OF REMARKS
OF

HON. ALFRED D. SIEMINSKI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, August 15, 1958

Mr. SIEMINSKI. Mr. Speaker, alert as ever to render merited praise, my administrative assistant, Mr. John Murphy, has brought to my attention the wonderful and unselfish work of the Junior Service League of Jersey City and especially the help it has given to the Whittier House Boys Club.

Dr. Henry J. Gewirtzman, who is president of the board of directors, and James B. Clarke, a member of the board, are only a few who know of the great assistance to the boys club by the junior league.

The young ladies of the junior league sacrifice time, social engagements, and in many instances their own personal interests to help the young boys at the Whittier House. I am proud of the work of these young ladies and I know our community is grateful and most thankful for all they have done and are doing to enhance community life.

Under leave to extend my remarks in the RECORD, I should like to include the following:

THE JUNIOR SERVICE LEAGUE OF JERSEY CITY, N. J., 1928–58

Thirty years ago the Junior Service League of Jersey City was organized under the able guidance of Miss Harriet Niese. Its purpose was to render volunteer service, to promote the social and economic welfare of Jersey City, and to further and promote its educational, cultural, and civic conditions.

The purposes of a Junior Service League are:

1. Careful training of the individual member.

2. Emphasis on her obligation to give her talents to the community.

Each new member is required to take a provisional training course to make her aware of her responsibilities as a citizen.

After this course is taken, an apprentice period has to be served in any community agency of the member's choice or wherever there is a need.

From the time she is accepted as an active member, each girl continues to contribute her volunteer services working up in many cases to positions of real responsibility as board members of various cultural, civic and welfare agencies.

A Junior Service League aims never to be competitive, but rather to pioneer in the field of cultural and welfare activities, with the guidance of professional leaders.

During these years of service, while the league has been training and providing young women to assist in the social services, the task of supporting the agencies has not been overlooked. The income from dues must cover all operating expenses, thus all money raised through dances, entertainment, card parties, and the like is made available for charitable purposes.

For many years they have published a pamphlet called Junior Service League Notes, containing articles written by members on various aspects of league work, news of the members, original stories, and poetry.

A brief review of some of the activities of the league during these 30 years shows that the league has consistently realized the purposes for which it was founded.

Originally the league distributed the money it raised among several social agencies. However, in 1932 the league sponsored an individual project, the Women's Exchange. In 1936 a survey of Jersey City was made and published in book form. This piece of research studied the city's social-service needs and evaluated the facilities of the agencies then in existence. This was one of the league's greatest contributions to social work in Jersey City. Because of this survey the Council of Social Agencies was formed. Then in 1939 they undertook the revitalization of the SPCC. During the war years they maintained clubrooms at the Fairmount Hotel for the use of officers of the armed services. In 1944 their special interest centered on the faimly service child welfare program, as well as redecorating and furnishing two dormitories and a sun porch at the Salvation Army Door of Hope. In 1946 they established the Volunteer Bureau. In 1949 the league assisted in developing a recreational program at Whittier House Boys' Club for girls as well as making major renovations in the clubhouses. This project has been so rewarding and the need so great that the league has continued to support this worthy organization ever since. In 1954 they furnished sundry equipment for the Girl Scout camp. In 1955 the league compiled and published a directory of social, health, and welfare agencies serving Hudson County for the Council of Social Agencies. They also purchased two lean-to's for the Boy Scout camp, as well as sponsored a series of lectures at the Woman's Club. In 1955 and 1957 they donated a total of six hospital beds to the American Cancer Society, Hudson County Chapter. In 1957 they established a hospitality cart for use at Greenville Hospital and participated in the formation of a Teen-Age Girls' Club at the A. Harry Moore housing project. Their biggest project that year was decorating and furnishing the teen-age lounge at the YMCA. Altogether, in the past 30 years, the league has given some $75,000 to various charitable enterprises in Jersey City.