

George Washington, Thomas Jefferson and Theodore Roosevelt. In a letter to the Foreign Operations and Government Information Subcommittee, dated March 7, 1962, he enunciated the policy as follows:

"... this Administration has gone to great lengths to achieve full cooperation with the Congress in making available to it all appropriate documents, correspondence and information. That is the basic policy of this Administration, and it will continue to be so. Executive privilege can be invoked only by the President and will not be used without specific Presidential approval."

President Lyndon B. Johnson informed the Subcommittee by letter, dated April 2, 1965, he would continue the policy enunciated by President Kennedy. He stated:

"Since assuming the Presidency, I have followed the policy laid down by President Kennedy in his letter to you of March 7, 1962, dealing with this subject. Thus, the claim of 'executive privilege' will continue to be made only by the President."

In view of the urgent need to safeguard and maintain a free flow of information to the Congress, I hope you will favorably consider a reaffirmation of the policy which provides, in essence, that the claim of "executive privilege" will be invoked only by the President.

Sincerely,

(s) JOHN E. MOSS, *Chairman.*

THE WHITE HOUSE,  
Washington, April 7, 1969.

Hon. JOHN E. MOSS,  
*Chairman, Foreign Operations and Government Information Subcommittee,  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: Knowing of your interest, I am sending you a copy of a memorandum I have issued to the heads of executive departments and agencies spelling out the procedural steps to govern the invocation of "executive privilege" under this Administration.

As you well know, the claim of executive privilege has been the subject of much debate since George Washington first declared that a Chief Executive must "exercise a discretion."

I believe, and I have stated earlier, that the scope of executive privilege must be very narrowly construed. Under this Administration, executive privilege will not be asserted without specific Presidential approval.

I want to take this opportunity to assure you and your committee that this Administration is dedicated to insuring a free flow of information to the Congress and the news media—and, thus, to the citizens. You are, I am sure, familiar with the statement I made on this subject during the campaign. Now that I have the responsibility to implement this pledge, I wish to reaffirm my intent to do so. I want open government to be a reality in every way possible.

This Administration has already given a positive emphasis to freedom of information. I am committed to ensuring that both the letter and spirit of the Public Records Law will be implemented throughout the Executive Branch of the government.

With my best wishes.

Sincerely,

(s) RICHARD NIXON.

MARCH 24, 1969.

#### MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

(Establishing a Procedure to Govern Compliance with  
Congressional Demands for Information)

The policy of this Administration is to comply to the fullest extent possible with Congressional requests for information. While the Executive branch has the responsibility of withholding certain information the disclosure of which would be incompatible with the public interest, this Administration will invoke this authority only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise. For those reasons Executive

privilege will not be used without specific Presidential approval. The following procedural steps will govern the invocation of Executive privilege:

1. If the head of an Executive department or agency (hereafter referred to as "department head") believes that compliance with a request for information from a Congressional agency addressed to his department or agency raises a substantial question as to the need for invoking Executive privilege, he should consult the Attorney General through the Office of Legal Counsel of the Department of Justice.

2. If the department head and the Attorney General agree, in accordance with the policy set forth above, that Executive privilege shall not be invoked in the circumstances, the information shall be released to the inquiring Congressional agency.

3. If the department head and the Attorney General agree that the circumstances justify the invocation of Executive privilege, or if either of them believes that the issue should be submitted to the President, the matter shall be transmitted to the Counsel to the President, who will advise the department head of the President's decision.

4. In the event of a Presidential decision to invoke Executive privilege, the department head should advise the Congressional agency that the claim of Executive privilege is being made with the specific approval of the President.

5. Pending a final determination of the matter, the department head should request the Congressional agency to hold its demand for the information in abeyance until such determination can be made. Care shall be taken to indicate that the purpose of this request is to protect the privilege pending the determination, and that the request does not constitute a claim of privilege.

RICHARD NIXON.

### APPENDIX 3

[Set I—The "Pentagon Papers"]

NOVEMBER 11, 1969.

Hon. MELVIN R. LAIRD,  
*Secretary of Defense,*  
*Washington, D.C.*

DEAR MR. SECRETARY: It is my understanding that the Department of Defense prepared a seventeen-volume history of the decision-making process on Vietnam policy covering the period from 1940 to April 1968. The project, I was informed, began under Secretary McNamara and was completed under Secretary Clifford and was confined to a study of written data. It appears that this study would be of significant value to the Committee in its review of Vietnam policy issues, and I would appreciate your making it, as well as any later studies of a similar nature, available to the Committee.

Sincerely yours,

J. W. FULBRIGHT, *Chairman.*

Handwritten P.S.—I appreciate your making the contingency plan available. It was interesting.

THE SECRETARY OF DEFENSE,  
*Washington, D.C., December 20, 1969.*

Hon. J. W. FULBRIGHT,  
*Chairman, Committee on Foreign Relations,*  
*U.S. Senate,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: This will acknowledge receipt of your letter with respect to the "history of the decision-making process" in connection with Vietnam.

In 1967, Secretary McNamara initiated a detailed history of the evolution of the present-day situation in Vietnam. It was conceived as a compilation of raw materials to be used at some unspecified, but distant, future date. On the basis of the understanding that access and use would be restricted, the documents were designed to contain an accumulation of data of the most delicate sensitivity, including NSC papers and other Presidential communications which have always been considered privileged. In addition, the papers included a variety of internal advice and comments central to the decision-making process.