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From the office of  
Rep. Gerald R. Ford, R-Mich

Release upon delivery *in the House on*

Speech  
in the House of Representatives

APR 4- 1963

Congressman Gerald R. Ford, Michigan Republican, today criticized the Kennedy administration for covering up the truth about the Bay of Pigs Invasion of 1961 with the blanket of executive privilege and said the President was doing it only to avoid controversy.

The Republican leader called on the House Committee on Government Operations to give priority consideration to a study of executive privilege, a theory holding that members of the Executive branch of government can withhold from Congress information which it feels should be kept secret.

Mr. Ford said he questioned General Maxwell D. Taylor, Chairman of the Joint Chiefs of Staff, about the findings of a study board appointed by President Kennedy to look into the conduct of the Bay of Pigs invasion effort. The interrogation took place in February when General Taylor testified before the subcommittee on defense appropriations on which Mr. Ford is the ranking Republican. General Taylor headed the study board, which has concluded its study and reported to the President.

General Taylor refused to answer questions designed to eliminate existing confusion on the handling of the invasion and based his refusal on instructions from President Kennedy and the "doctrine" of executive privilege.

Mr. Ford, recalling that President Kennedy in his State of the Union address in January 1961 had pledged not to withhold any information from the Congress, declared that General Taylor's refusal made the President's pledge "wholly meaningless."

The result, he said, is that all America knows about the invasion has come through Attorney General Robert Kennedy, who "managed" to inform a newspaper and a news magazine about certain aspects of the U. S. involvement. He warned other members of Congress about the seriousness of the principle involved, saying that only when full information is available can Congress perform its legislative function. He appealed for a non-partisan approach to the matter and suggested the committee on Government Operations might investigate alternate ways to bring the issue into court for "meaningful debate on an issue now hopelessly fogged in by Executive jealousy and Congressional pride."

The full text of the speech is attached.

For pertinent testimony, see pp. 80-85 and p. 310 of Part I, Hearings before Subcommittee on Department of Defense Appropriations, Fiscal 1964.

## EXECUTIVE PRIVILEGE

Speech in the House of Representatives by  
Gerald R. Ford, R-Michigan

This is the first time I have taken the floor of this House to speak on a subject which for several years has been of increasingly serious concern to my colleagues on both sides of the aisle in both chambers of Congress. But then this is the first time I have had personal experience with this issue. I refer to the claim by the Congress of its right to obtain information from the Executive Branch of government in the face of a claim by the Executive of a right to deny the information because of its "executive privilege."

From February 6th through February 14th of this year, General Maxwell D. Taylor, Chairman of the Joint Chiefs of Staff, was before the subcommittee on Department of Defense Appropriations of which I am the ranking minority member. During the course of our committee's lengthy interrogation of Secretary of Defense Robert S. McNamara and General Taylor, the subject of the Bay of Pigs invasion of 1961 was raised. The committee members were concerned about the events of that effort, for although it took place two years ago it is still a matter of considerable controversy and discussion. Further, it was felt that a full understanding of what happened there would enable the committee to better exercise its judgment of the financial needs of the military establishment. It is our subcommittee which has original Congressional jurisdiction each year of the budget for the Departments of the Army, Navy and Air Force. Because of the group's control over funds for the military and related agencies, it has specific concern with and responsibility for Army, Navy, and Air Force policies, programs, and procurements.

Mr. McNamara was questioned first, but he avoided implication in the problem by stating that United States forces as such were not involved in the invasion. Then General Taylor was questioned on that subject, first on February 7th and again on the following day. His knowledge of that incident should be just about the most complete in the land. At the President's request he directed a study board consisting of Attorney General Robert Kennedy, Chief of Naval Operations Arleigh Burke, and former CIA Director Allen Dulles. The board looked into all phases of the invasion attempt and filed a report with the President. Our questions were directed to the information which General Taylor was thus in a position to tell us about the invasion attempt. The testimony has been published in censored form by the subcommittee, but I shall only summarize its contents here.

First, public statements and testimony before us revealed that President Kennedy instructed the four members of the board not to reveal their findings except to him. Second, Admiral Burke apparently followed these instructions and did refuse to discuss it with reporters from U.S. NEWS AND WORLD REPORT. Third, Attorney General

Robert Kennedy did reveal part of the findings in a long interview published in the same magazine January 28th, 1963 and also to David Kraslow of the Knight Newspapers in an interview published January 21st, 1963. Fourth, General Taylor refused to discuss this report or any findings of the study board before our committee and claimed that his refusal was prompted by President Kennedy's order and the concept of "executive privilege."

Now it is true that America has heard, seen and read a great deal about the Bay of Pigs in the last two years. This is understandable, for it certainly is one of the most unfortunate, embarrassing and shameful incidents with which our country's name has ever been connected. I would venture to say that it will loom larger on the landscape of history as the years pass. It seems that not a month goes by without some new disclosure of our government's fumbling role in that disastrous operation. Some wise old owls have complained that we Republicans are beating a dead horse by our references to that occasion. To that I simply reply that in our subcommittee we are trying to do our part of the job Congress is supposed to do -- get the facts, study them and then pass the laws and appropriate the funds for the operation of the government.

Why has General Taylor refused to reveal his knowledge of this incident? Certainly not for security reasons. I asked him, "How would it endanger the security of the United States (to discuss the Bay of Pigs)?" He answered:

"I think it would result in another highly controversial, divisive public discussion among branches of our government which would be damaging to all parties concerned."

Now I ask you gentlemen, is Congress to be denied this information because to reveal it would stimulate controversy? What General Taylor has said in effect is that he won't tell us the facts because the President told him not to, because the public should forget it ever happened, and because the administration might be embarrassed if the truth were known.

So General Taylor does not claim that the national security is at stake. But even if it were, even if intelligence matters were involved, this would not justify refusal to tell the members of the subcommittee the full facts as collected and digested by this high-level committee of four appointed by the President. All of us on the Defense Appropriations Subcommittee are fully cleared for access to this sort of information. We handle state secrets regularly. We see to it that these secrets are kept on a classified basis. Only those members of Congress with a demonstrated "need to know" have access to this information.

I am astounded that General Taylor should offer as grounds for his refusal to testify on that matter the possibility that controversy might result. Surely he and President Kennedy are not so short on memory that they forget their own separate and consistent challenges of Eisenhower policies, attitudes and decisions in military

and foreign affairs, and the controversy their remarks generated.

To date, then, this subcommittee has access to only part of the story of the Bay of Pigs invasion -- the part which Attorney General Robert Kennedy managed to give a newspaper reporter and a news magazine. The information in that article is the subject of legitimate criticism and controversy. In our efforts to resolve some of that controversy, the subcommittee is blocked by a decision of the immediate superior and older brother of the very source of the controversial material.

The facts at issue are past happenings; events of history; things over and done with. Supposedly, they have been carefully reviewed and analyzed. What better time is there for Congress to investigate this subject and obtain this information?

I would remind the House of a commendable statement made by President Kennedy in this chamber on January 29, 1961:

"For my part I shall withhold from neither the Congress, nor the people, any fact or report, past present or future, which is necessary for an informed judgment of our conduct and hazards."

My personal experience with General Taylor on the subject of the Bay of Pigs leads me to the conclusion that these carefully selected and beautifully spoken words are wholly meaningless.

This brings me to some basic questions which have troubled me a good deal lately. Can Congress permit this kind of refusal to go unchallenged? What can we do? What should we do?

Please believe this next statement. We must keep this whole discussion on a non-partisan level. Certainly there are partisan possibilities in my questions of General Taylor. His answers, if given, might have publicized the inability of the Kennedy Administration to conduct a well integrated military effort or some such finding which the Republicans would enjoy exposing. But the basic issue of Congressional access to Executive information is far more important than fanning partisan flames.

I need only remind you of the important work in this field done by the very able gentleman from Virginia, Mr. Hardy, and his fellow Democrats, Mr. Moss of California and Mr. Monagan of Connecticut, as well as my distinguished friend from Michigan, Mr. Meader, to underscore the non-partisan nature of this issue.

We all know that this problem has come up in various guises many times over the years. It has cut back and forth across party lines. There even are examples of both Democrats and Republicans who argued on one side of the issue when they served in Congress and on the other side when they served in the Executive branch.

I shall not attempt here to review the legal problems and precedents involved in this concept of executive privilege. (I decline to refer to it as a doctrine. One

man's doctrine is another man's myth.) Suffice it to say that the traditional arguments seek to answer this question: who has the authority -- the Congress or the Executive -- to decide what information must be given to Congress for the conduct of its investigations?

Unfortunately, the Constitution is silent on this problem. Proponents of the privilege say the Constitutional concept of separation of powers extends to allow the Executive to do as it likes with his information. But at the same time, the Constitution's system of checks and balances provides for certain overlapping of powers. Examples of such exceptions from the separation of powers idea are the Senate's authority to pass on treaty agreements and the President's veto power. Nothing is said in the Constitution about any Executive right to keep Congress in the dark, and I seriously doubt that this was the intention of the framers.

If it were their intention, the Constitution would have given the Executive branch the power to write its own record of the facts on any given issue. That power, the power to collect facts from many witnesses, challenge the accuracy of those facts and analyze their importance -- that power belongs to Congress.

In the court room, there are several recognized types of "privilege." These are the privileged relationship between the lawyer and his client, that between a priest and parishioner and that between a husband and wife. But I submit that the Chief Executive of the United States enjoys no such privileged relationship with the people of our country or their representatives in Congress. The Executive exists to serve the people by administering laws and the Congress exists to legislate in the best interests of the people. To maintain that the Executive has the right to keep to itself information specifically sought by the representatives of the very people the Executive is supposed to serve is to espouse some power akin to the divine right of Kings.

Further, no court has ever been faced with the issue, and until it is the debate will likely continue.

This is not to say that we could not force such a case. The House has, in fact, two paths open to it if it should choose to force General Taylor to provide the requested information on the Bay of Pigs investigation. First, the committee could sponsor a House Resolution citing the General in contempt of Congress and presenting the case to the Attorney General for admission to a grand jury and subsequent prosecution. Obviously in the present circumstances it would be ridiculous for us to put the case in the hands of the Attorney General. Even under ideal circumstances, any Attorney General would tend to reflect the attitude of his own boss in handling any executive privilege case. Second, we could call the General to the floor of the House, and, if he still fails to answer the questions, find him in contempt. He then would be placed in the custody of the Sergeant at Arms and jailed, presumably to the end of the Congressional session.

I do not suggest either course of action for two reasons. First, such direct and highly-charged confrontations probably would produce more heat than light. The mutual confidence and rapport which exists between the two branches could be damaged beyond immediate repair. We must have this rapport between all three branches to properly govern our land. Second, I don't suggest either type of confrontation because I have doubts that this particular incident presents a classic enough case to justify formal action in either of the two legal arenas previously mentioned. General Taylor's refusal has not stopped the defense subcommittee in its tracks, but I am convinced that the hidden information would be of significant value in performing our subcommittee's responsibility. I do not see how any committee could recommend a specific sum for the military or intelligence operations of our government without knowing how well the previous appropriation has been spent. It might waste the taxpayers money by appropriating too much, or jeopardize our security by being too stingy. Surely as we face the challenge of a new era in Latin America, the Congress has the high responsibility of insuring military and intelligence capabilities which are able to cope with such problems as have already arisen and may confront us again.

However, there is a fine distinction between preventing the committee from functioning and preventing it from functioning as well as possible. And it is such distinctions which have a way of becoming all important in the courtroom.

What I do suggest is that this incident be remembered as another in a long series of Executive Department claims of special privilege. In a frightening proportion of these cases, the claim was made to cover up dishonesty, stupidity and failure of all kinds. We have only to recall that the Teapot Dome of Harding's administration, the tax scandals in Mr. Truman's and the Laos foreign aid mess in the last administration all were initially covered up by the "executive privilege" blanket. There have been many more instances. You all have seen that pattern develop. First the suggestion of wrongdoing is made. Congress demands the records. The people downtown in the ivory tower of the executive branch stall and say the investigation is silly. Then they simply refuse to give the information. Something eventually leaks out and the scandal spills over for all the world to see. Then someone resigns and his resignation is accepted with "regret." Congress cannot help but conclude that executive privilege is most often used in opposition to the public interest.

My fear is that there may be far more trouble if we permit this concept to take deep root. The key idea is that while the powers of Congress and the Executive certainly must be separated, so must the traditional system of checks and balances have real meaning. The investigatory power of Congress is well founded in law and so basic to its legislative function that without freedom to investigate thoroughly Congress can have no effective check on the Executive Branch. It should be superfluous

to say that without adequate information no investigation can succeed.

I would further suggest that the Committee on Government Operations, through its Subcommittee on Foreign Operation and Government Information, give priority consideration to this problem of executive privilege and offer proposals to resolve this dilemma. It may be possible, for example, for Congress to find another way to bring the matter to court without going through the Attorney General. This would serve to prompt meaningful debate on an issue now hopelessly fogged in by Executive jealousy and Congressional pride.

I would also alert the entire membership of this House to the existence of this critical problem and warn you that none of your committees would be immune to the stifling influence of executive privilege if the President found it expedient to invoke it tomorrow. This affects us all as members of the House, and through us it affects all America. We cannot abide its existence one wit longer than necessary.

Whenever the concept of executive privilege is discussed, special emphasis is given the fact that it has been so traditional a problem that even President Washington faced it. First may I insist that the passage of time has no bearing whatsoever on the legality of this concept. Indeed, the mere fact that an idea has been thought "acceptable" by some for 170 years is probably a very good argument for challenging its validity today. More important, however, is the striking parallel between the incident which spawned the problem in Washington's time and the one which prompts my comments today.

In 1791 President Washington sent Major General Arthur St. Clair into the midwestern wilderness to stop a series of Indian raids along the Ohio-Indiana border. On November 3rd of that year, General St. Clair's troops were surprised by the Indians and nearly half of the 1,400 soldiers were wiped out. It was one of the worst military fiascoes in our country's history. The next spring Congress appointed a special committee to investigate the facts and in the process demanded all relevant papers and reports from the Executive branch.

President Washington and his cabinet mulled the problem over for several days, completely aware of the important precedent they were setting. As it turned out, President Washington agreed that there was not one report or paper which could not be produced for the examination of Congress and, in fact, they were produced. The results? The Congress learned that mismanagement and a lack of supplies were the largest factors in the defeat.

The St. Clair defeat bears relation to the Bay of Pigs defeat in that our government suffered a badly damaging blow in both cases. Both cases involved serious mismanagement. Both cost American lives. Both were events in history that were over and done with and investigated by the Executive by the time the Congress began its



inquiry. The difference, apparently, is that while Washington was willing to bare the records so that errors could be corrected before they were repeated, President Kennedy is not willing to follow that example.

To conclude, let me stress that while we must always protect the general public's right to full information, the basic issue here is full disclosure to Congress -- to that same group of Congressmen who regularly review issues of the most sensitive national interest and make decisions in behalf of the public.

Let me urge you all to think of this not in terms of the Bay of Pigs invasion or in terms of a minority Congressman who objects to actions of a President of the opposite party. This is a critical problem of vast scope. It would exist even if we had only one Congressman making all the law for a one-man Executive branch. It is one of the great legislative challenges of our time and we must either face it or accept the certainty of continued assaults upon Congress's right to know.

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