The dispute over public testimony by Condoleezza Rice and the Aug. 6, 2001, President's Daily Briefing are the most recent examples of White House efforts to keep "national security" information from Congress, its commissions, and the public. Executive-legislative confrontations typically begin with broad White House claims that the release of such testimony or documents presents weighty constitutional matters and would gravely injure the national interest. Just as typically, political pressures can compel the executive branch to make the testimony and documents available.

It is true that White House officials generally have been insulated from congressional inquiry because of a long-standing comity that exists between Congress and the presidency. But as the White House continues to expand its operations to determine policy that used to reside in the executive departments, where legislative oversight is strong, Congress has less reason to grant the White House its customary independence. And while debate over when Congress should assert its power usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue.

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Even inside the White House, privilege yields to politics.

The United States, and advised the Court during oral argument that making the documents "would be of extraordinary seriousness to the security of the United States," he later admitted in 1989 that he had never seen "any trace of a threat to the national security from the publication of" the Pentagon Papers. The principal concern of executive officials who classify documents, he said, "is not with national security, but rather with governmental embarrassment of one sort or another."

Within the judiciary, Burger's cautious attitude toward judicial power has long since been superseded by statutory grants of power to the courts that invite judges to exercise independent judgment on matters of national security. In the University of Virginia Law Review, George Washington called executive privilege "a doctrine of separation of powers, President Nixon claimed that the manner in which the president exercised executive powers was subject to questioning by another branch of government. He claimed that if the president was not subject to such questioning, "it would be completely inappropriate that members of his staff not be so questioned, for their roles are in effect an extension of the president's." Within a matter of weeks, however, Nixon agreed to let Dean and other White House aides testify.

Similarly, during the Iran-Contra scandal, presidential aides worried about the vulnerability of President Ronald Reagan to impeachment. Reagan, in fact, had quite a different view of the opposition from charging acover-up. Because Reagan made documents that classified national security secrets subject to questioning by another branch of government. He claimed that if the president was not subject to such questioning, "it would be completely inappropriate that members of his staff not be so questioned, for their roles are in effect an extension of the president's." Within a matter of weeks, however, Nixon agreed to let Dean and other White House aides testify.

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