cuses on whether the questions involved present judicially discoverable and manageable standards, and thus are susceptible to competent adjudication by the court. It is not difficult to identify the relevant considerations: the need of the subcommittee for the information sought, the likelihood of public disclosure, and the magnitude of resultant harm to national security. Initially, what loomed as unmanageable was the process of weighing these factors to determine their relative magnitude. The court's earlier decision to encourage further negotiation has largely obviated this problem by bringing into sharper focus the needs of the parties.

The court cannot accept the claims of either the executive or legislative branch that its determination of the propriety of its acts is conclusive on the court. Such claims invite the court to adapt the political question doctrine for cases where the political branches are in conflict. Neither the traditional political question doctrine nor any close adaptation thereof is appropriate where neither of the conflicting political branches has a clear and unequivocal constitutional title, and it is or may be possible to establish an effective judicial settlement.

The executive argues that the Constitution confers on it absolute discretion in the area of national security. This does not stand up. The Constitution confers on the President and Congress powers inseparable from the national security. The degree to which the executive may exercise its discretion in implementing its national security concerns is unclear when those concerns conflict with equally legitimate assertions of authority by Congress to conduct investigations relevant to its legislative functions.

The subcommittee argues that judicial interference with its actions is barred by the Speech or Debate Clause; Eastland v. U.S. Servicemen's Fund, 421 U.S. 491, 43 LW 4635, is cited. But case law indicates that individual members of Congress are not impermissibly "questioned in any other place" regarding their investigatory activities merely because the validity and permissibility of their activities are ajudicated. In those cases, unlike Eastland, the challenge to congressional activity was raised as a defense. The Clause was intended to protect legislators from executive and judicial harassment; it does not and was not intended to immunize congressional investigatory actions from judicial review. While this case is similar in several respects to the situation in Eastland, for purposes of considering whether the executive's claim is entitled to at least some judicial consideration, the court emphasizes that no member of the subcommittee in the present dispute has been made a defendant in a judicial proceeding. Courts do not accept the concept that Congress' investigatory power is absolute. What the cases establish is that the immunity from judicial inquiry afforded by the Clause is personal to the members of Congress. Where they are not harassed by personal suit against them, the Clause cannot be invoked to immunize the congressional subpoena from judicial scrutiny.

Turning to the merits, the court sustains an injunction barring the telephone company from complying with the subpoena at least until a proposed procedure providing limited subcommittee access and verification and in camera resolution of disputes has been tried and has proved inadequate.—Leventhal, J.

—CA DC; U.S. v. American Telephone & Telegraph Co., 10/20/77.

Freedom of Information

EXEMPTIONS—

Accounting ledger sheets retained in files of Watergate Special Prosecution Task Force, which list contributors, recipients of funds, and amounts of contributions to secret and illegal political fund-raising committee are subject to disclosure under Freedom of Information Act, despite task force's assertion that disclosure of contributors' and recipients' identifies would constitute unwarranted invasion of privacy, since campaign fund disclosure requirements of Federal Corrupt Practices Act [FCPA] strip contributors of whatever "cloak of privacy" they would otherwise have been entitled to, and since FCPA itself is congressional pronouncement that circumstances surrounding campaign contributions are per se matters of public concern.

Plaintiff, an independent news-gathering organization composed of freelance journalists, seeks disclosure under the Freedom of Information Act of Watergate Special Prosecution Task Force documents relating to the "Townhouse Operation." This operation, which functioned out of a Washington, D.C., townhouse, raised about $3 million for disbursement to particular Republican congressional candidates. The task force concluded that the operation constituted a political committee operating in violation of the Federal Corrupt Practices Act. Three persons ultimately pleaded guilty to violations of the FCPA.

Plaintiff seeks access to accounting ledger sheets showing contributions to the committee, the amount of such contributions, and the names of recipients. The task force resisted disclosure, asserting that the identities of contributors and recipients were exempt under the FOIA as material whose disclosure would represent an unwarranted invasion of privacy. The "aura of Watergate," the task force argues, "is such that any connection of an individual to a Watergate investigation carries with it an implication of criminality and political corruption which is inescapable."

The traditional view is that a citizen's politics are his own affiar, and that contributors to a political fund have an enforceable interest in maintaining their privacy. The disclosure requirements of the FCPA, however, strip contributors and recipients equally of whatever cloak of privacy their relationship would have had in the statute's absence. It is undisputed that the statute applied to this committee, and it is therefore preemptive as far as the contributors' and recipients' privacy interest is concerned.

[Text] In concluding as a matter of law and undisputed fact that plaintiff is entitled to the information contained in the ledger sheets, we do not depreciate the degree to which disclosure of the information may embarrass wholly innocent contributors and recipients. Nevertheless, to permit the "aura of Watergate" within which the Townhouse Operation transpired to become the basis for suppressing the details of contributions would be to exacerbate the original failure to disclose them. In the language of the exemption whatever invasion of privacy may ensue from production of this information is not "unwarranted." The risk of such invasion was assumed by anyone making or receiving contributions reportable under the FCPA. [End Text]

Watergate Special Prosecution Task Force documents concerning activities of individual who allegedly leased offices for use by secret political fund-raising committee are exempt from disclosure in reporters' Freedom of Information Act lawsuit, pursuant to exemption (b)(7)(C) of Act, since public interest in disclosure of individual's role as landlord is minimal, and since disclosure of documents relating to criminal investigation, if any, of individual would constitute "unwarranted invasion" of privacy.

Plaintiff also seeks disclosure of task force records concerning Robert Conkling, who is described as having subleased the Washington offices of his firm for use by the Townhouse Operation. Unlike the information contained on the ledger sheets, Conkling's role obviously does not fall within the FCPA's reporting requirements. Balanced against his privacy interest is the undeniable public interest concerning the details of an illicit political fund-raising effort in which members of the White House staff participated.

If Conkling merely served as landlord to the operation, the public interest in disclosure of his role in minimal. If his role was more significant and if he was the subject of a criminal investigation, then disclosure of such investigative records, in the absence of a criminal charge, would expose him to public embarrassment and ridicule and place him in the position of having to defend his conduct without the benefit of a formal judicial proceeding.—Pratt, J.

—USDC DC; Congressional News Syndicate v. Department of Justice, 10/13/77.