

# Washington's Waiver of Executive Privilege in the

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## Randolph Case Cited as in Conflict With

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### Nixon Position

By GLENN FOWLER

President Nixon's contention last week that "every President since George Washington has tried to protect the confidentiality of Presidential conversations" is rebutted, at least in part, by a long-forgotten incident involving one of Washington's Cabinet officers. The offi-



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Edmund Randolph

cial resigned in disgrace and obtained the President's permission to make public letters and conversations between the two as a means of clearing his name.

Washington, fearful that disclosure of the issue would severely damage delicate relations that then existed between the fledgling republic and the two major European powers, Britain and France, nevertheless permitted full disclosure of what he had written and said, reportedly hoping thereby to demonstrate the integrity of his Government.

The controversy, involving Edmund Randolph, Secretary of State in Washington's second Administration, was first brought to light in its present

context by Edward Brown, commentator for Radio Station WNEW, following Mr. Nixon's discussion of Presidential confidentiality at his news conference last Friday.

The Randolph affair, which occurred midway in Washington's second term, is detailed most recently in the fourth volume of a definitive biography of the first President by James Thomas Flexner, for which Mr. Flexner won the Pulitzer Prize earlier this year. Mr. Flexner, an author and lecturer who lives in New York, elaborated on the incident in a telephone interview.

"Washington was confronted

with a clear case of whether to cling to executive privilege, and he chose not to," Mr. Flexner said. "He believed very strongly that national unity was essential if the United States was going to be secure. He knew that revelation of his writings and conversations by Randolph could harm the country's international relations, but he concluded that it was more important to retain public confidence that he as President had nothing to hide, so he permitted the disclosure."

In his biography, Mr. Flexner quotes Washington's words in conveying his decision to

Randolph, who had sought in particular a letter from Washington to another high official that revealed a potentially embarrassing policy shift by the President in a matter of paramount interest at the time—the conclusion of the Jay Treaty with Britain to normalize relations between the two recent antagonists in the Revolutionary War.

Washington gave his former Secretary of State permission not only to inspect the sensitive letter, Mr. Flexner recounts, but also, in Washington's words, "to publish, without reserve, any and every private and confidential letter I ever

wrote you; nay more, every word I have ever uttered in your presence."

The President's only request was that Randolph make public in his defense the fact that Washington had given his permission for the disclosure. In this way, Washington hoped, the public would "appreciate my motives even if it would condemn my prudence in allowing you the unlimited license herein contained."

Randolph resigned in the summer of 1795. He had been one of Washington's closest friends as well as Attorney General in the first Administration and later Secretary of

State. The events that led to his downfall were interwoven with a climate of intrigue and rivalry that pervaded the upper councils of the young nation.

As the Flexner biography recounts, Randolph was suspected by fellow Cabinet officers of having given the French, possibly for money, information about the Washington Administration's suppression of the Whiskey Rebellion of 1794. The fact that the Secretary of State was informally feeding inside information to a foreign power had fallen into the hands of the British, who promptly brought it to the attention of

those in the American Cabinet who supported Britain in its continuing war with France.

Washington, with the charges against his old friend at hand, confronted Randolph with them. The Secretary resigned but denied his guilt and prepared to take his case to the newspapers. Mr. Flexner notes that although contemporary accounts clearly disbelieved Randolph, subsequent research has led most historians to conclude that Randolph was not a traitor and that his reports to the French Ambassador had contained mostly harmless gossip.

It was at this point that Washington faced his decision

on executive privilege. Having given Randolph carte blanche to disclose anything that had passed between them, Washington waited four months before Randolph published a 10-page pamphlet entitled "Vindication."

The pamphlet attacked Washington strongly, exposed the President's vacillation on the Jay Treaty with Britain and made other damaging points. But Mr. Flexner concludes that the President, aside from having to admit that his close friend and trusted adviser had turned out to be "a knave," came out of the incident without serious damage to his public image.