

Letters to the Editor

Of Evidence and Our Privileged Class

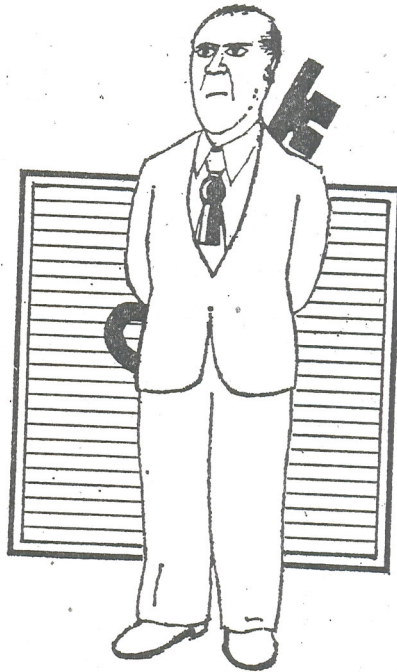
To the Editor:

The current furor over subpoenas of special prosecutors and Congressional committees directed to the executive department and the claims of privilege of one sort or another brings to the fore the broader question of immunities to subpoenas under various state and Federal statutes and regulations.

Still ringing in my ears after almost half a century are the words of Adelbert Moot, one of the last of the bearded patriarchs of a previous generation and my instructor on evidence at the University of Buffalo Law School: "No man—not even the President of the United States—can refuse to testify in a court of competent jurisdiction to facts within his knowledge where those facts are material or relevant to an issue of litigation."

Some years ago when I was chairman of the Committee on Administrative Law of the New York State Bar Association, I suggested that the Congress should enact a law which would provide that any statute, rule or regulation to the contrary notwithstanding, no department, bureau or agency may assert any claim of privilege or immunity to subpoena with respect to any information, document or other matter within its possession or knowledge in any judicial or quasi-judicial proceeding in which such information, document or other matter is material or relevant to an issue in litigation.

The Veterans Administration and the Internal Revenue Service are two agencies of the Federal Government which customarily claim such privilege unless waived. Even state agencies claim privilege under Federal mandate,



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There are doubtless many others. The Supreme Court has often reiterated the long-standing principle that "the public has a right to every man's evidence." This obviously includes government agencies and bureaucrats.

Now, as informed citizens have become aware of the extent to which claims of privilege and immunity can go, is a good time indeed to reassess the whole mess to consider the imperative necessity of such a statute. Congress should act.

B. T. MANGANO
Albany, July 10, 1974