Station #2

Executive Privilege

The concept of executive privilege is the idea that the president can withhold certain information from anyone including Congress, and the courts. The term executive privilege was first used in the 20th century by President Dwight D. Eisenhower, but George Washington did use executive privilege on a couple of occasions with Congress. (See excerpt below) Executive privilege is not mentioned in the constitution, and its use by presidents has not always been successful. Richard Nixon, during the Watergate scandal in 1973, tried to use executive privilege in order to keep some recorded conversations from being turned over to Congress. He was unsuccessful and this led to his resignation of the presidency.

Below George Washington's response to the House of Representatives requesting information about a treaty between the United States and Great Britain

Message to the House of Representatives, Declining to Submit Diplomatic Instructions and Correspondence (March 30, 1796)

Gentlemen of the House of Representatives:

With the utmost attention I have considered your resolution of the 24th. instant, requesting me to lay before your House, a copy of the instructions to the Minister of the United States who negotiated the Treaty with the King of Great Britain, together with the correspondence and other documents relative to that Treaty, excepting such of the said papers as any existing negotiation may render improper to be disclosed.

I trust that no part of my conduct has ever indicated a disposition to withhold any information which the Constitution has enjoined upon the President as a duty to give, or which could be required of him by either House of Congress as a right; And with truth I affirm, that it has been, as it will continue to be, while I have the honor to preside in the Government, my constant endeavour to harmonize with the other branches thereof; so far as the trust delegated to me by the People of the United States, and my sense of the obligation it imposes to "preserve, protect and defend the Constitution" will permit.

(Washington is saying in the above section that he is not trying to deliberately withhold information from Congress, and that he will always try "preserve, protect and defend the Constitution" and work with the other branches of government.)

The nature of foreign negotiations requires caution; and their success must often depend on secrecy; and even when brought to a conclusion, a full disclosure of all the measures, demands, or eventual concessions, which may have been proposed or contemplated, would be extremely impolitic; for this might have a pernicious influence on future negotiations; or produce immediate inconveniences, perhaps danger and mischief, in relation to other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of
making *Treaties in the President, with the advice and consent of the Senate*, the principle on which that body was formed confining it to a small number of Members.

To admit then a right in the *House of Representatives* to demand, and to have as a matter of course, all the Papers respecting a negotiation with a foreign power, would be to establish a dangerous precedent.

Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject; and from the first establishment of the Government to this moment, my conduct has exemplified that opinion, that the power of making treaties is exclusively vested in the *President*, by and with the advice and consent of the *Senate*, provided two thirds of the Senators present concur, and that every treaty so made, and promulgated, thenceforward became the Law of the land. It is thus that the treaty making power has been understood by foreign Nations: and in all the treaties made with them, we have declared, and they have believed, that when ratified by the *President* with the advice and consent of the *Senate*, they became obligatory. In this construction of the Constitution every *House of Representatives* has heretofore acquiesced; and until the present time, not a doubt or suspicion has appeared to my knowledge that this construction was not the true one. Nay, they have more than acquiesced: for till now, without controverting the obligation of such treaties, they have made all the requisite provisions for carrying them into effect.

As therefore it is perfectly clear to my understanding, that file assent of the *House of Representatives* is not necessary to the validity of a treaty: as the treaty with Great Britain exhibits in itself all the objects requiring legislative provision; And on these the papers called for can throw no light: And as it is essential to the due administration of the government, that the boundaries fixed by the constitution between the different departments should be preserved: *A just regard to the Constitution and to the duty of my Office, under all the circumstances of this case, forbids a compliance with your request.*

Foldable instructions

On the 2nd flap of your foldable complete the following

1. On the top write: Executive Privilege and draw a picture to represent executive privilege
2. On the top inside flap describe what executive privilege is
3. On the bottom inside flap answer the following:
   a. What did Congress want from President Washington? (First Arrow)
   b. What were at least two reasons Washington gave for not agreeing to this request? (Last three arrows)
   c. Do you believe that the president has the right of executive privilege? Why or why not?