

## ADVICE NO. 33

**PARLIAMENTARY PRIVILEGE — DOCUMENTS PROTECTED FROM  
COMPULSORY PRODUCTION — FURTHER US JUDGMENT**

There has recently been a further judgment in the American courts about documents protected by parliamentary privilege from compulsory process for production.

In this case, a group of litigants sought to compel several members of Congress to produce documents from their offices relevant to an action about campaign financing legislation.

The court refused to order the production of documents in the terms sought, on the basis that it would be inconsistent with the parliamentary privilege to require the members to identify and separate from protected documents the non-protected documents which would be compelled, because this would impose a burden of the kind which the privilege is construed to avoid.

The judgment follows others, including that in the tobacco corporation case (*Brown and Williamson Tobacco Corp v Williams*, 1995 62 F 3d 408). The latter, in addition to confirming that members may not be compelled to produce documents within the sphere of their legislative activities, indicated that it would be inconsistent with the privilege to authorise wide-ranging searches of members' files containing protected material.

The additional element in the recent judgment is that, even when it is known or conceded that an order will turn up non-protected documents, members may not be required to search their files simply on that basis.

If that principle were followed in Australia, and applied in criminal investigations, the Senate, following the judgment in *Crane v Gething*, could reasonably have declined to authorise the examination of Senator Crane's documents and returned them to him, and Senator Harris could have required the return of all his documents without separating the protected and non-protected documents.

This gives added point to the contention that it is not proper for searches under warrant of senators' offices simply to sweep up all documents in the offices without regard to their relevance to the investigation or their privileged status, and impose on the senators the task of identifying and separating the protected documents.

Attached is a copy of the judgment, which is very brief.