LR 8281

☐ UNCLASSIFIED ☐ INTERNAL USE ONLY ☐ CONFIDENTIAL ☐ SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:	EXTENSION	NO.
Acting Legislative Counsel 7D49		DATE 27 June 1975 25X1

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Director				Attached for your information are three items of interest from Thursday's Congressional Record. First is a statement by Senator Mondale regarding the Rockefeller Commission findings. Mondale begins by emphasizing the necessity for a CIA and a covert action capability. He praises the "reasonably thorough" Commission investigation, but criticizes many of the recommendations of the Commission as too weak. He singles out the Commission recommendation on the sources and methods legislation for special attack. He shows considerable misunderstanding of the proposal in equating it with the UK's Official Secrets Act. Representative Badillo (D., N. Y.) has introduced a bill to create a special prosecutor to investigate and prosecute violations of any federal statute by CIA or any other intelligence agency employees. Badillo says this is necessary in light of the delegation by the Department of Justice to the CIA of the authority to investigate possible criminal offenses. Senator Mathias took issue with an editorial by Hanson W. Baldwin printed in The New York Times on the dangers of the current investigations. Mathias wrote to the Editor and has placed his letter and the original editorial in the Record. STAT Acting Legislative Counsel
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

FORM 3-62 610 USE PREVIOUS EDITIONS ☐ SECRET ☐ CONFIDENTIAL ☐ INTERNAL USE ONLY ☐ UNCLASSIFIED

tem as applied to employee performance and its influence on the responsiveness and accountability of Federal employees to the public interest; and

(6) any other aspect of the Federal bureaucracy which may improve governmental efficiency and provide the American people with a government more in tune with the need for change.

SEC. 4. (a) For the purposes of this resolution, the select committee is authorized in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) to hold hearings, (4) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (5) to require, by subpena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (6) to take depositions and other testimony, (7) to procure the services of individual consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, as amended, and (8) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(b) With the consent of the chairman of any other committee of the Senate, the select committee may utilize the facilities and the services of the staff of such other committee of the Senate, or any subcommittee thereof, whenever the chairman of the select committee determines that such action is necessary and appropriate.

(c) Subpenas authorized by the select committee may be issued over the signature of the chairman, or any other member designated by him, and may be served by any person designated by the chairman or member signing the subpena.

(d) The chairman of the select committee or any member thereof may administer oaths to witnesses.

SEC. 5. From the date this resolution is agreed to, through February 29, 1976, the expenses of the special committee under this resolution shall not exceed $400,000, of which amount not to exceed $100,000 shall be available for the procurement of the services of individual consultants, or organizations thereof, as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended.

SEC. 6. The select committee shall report its findings, together with such recommendations for legislation as it deems advisable, with respect to the study and investigation under this resolution to the Senate at the earliest practicable date.

SEC. 7. Expenses of the select committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the select committee.

QUORUM CALL

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MONDALE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE RECOMMENDATIONS OF THE ROCKEFELLER COMMISSION

Mr. MONDALE. Mr. President, in the 2 weeks since the report of the Rockefeller Commission on CIA activities within the United States has been published, we have had an opportunity to consider its findings, its conclusions and begin to come to grips with its recommendations. It opens up many crucial issues concerning our constitutional rights, the functions of our Government and the protection of our individual liberties and national interests.

I approach the Commission report and my responsibilities as a member of the Senate Select Committee on Intelligence Operations with the belief that we need a Central Intelligence Agency. We need a thorough and coordinated intelligence effort so as to provide our Government the soundest possible basis for our diplomacy and our defense. And I believe there may be a role for certain covert actions, particularly if this is necessary to counter the covert actions of our adversaries. It is in this spirit that I have carefully studied the report of the Rockefeller Commission on domestic CIA activities.

While it is clear that the Commission did not have the mandate to address all of the many important questions concerning the intelligence activities of the United States, the report is a serious and worthwhile effort to come to grips with the alleged abuses carried out by the CIA in their domestic operations. The Commission should be given credit for a reasonably thorough investigation of some of the charges leveled at the CIA and for the straightforward manner within which the findings are presented. The recommendations, however, require the most thorough debate and consideration.

Many of the recommendations are close to the mark. The proposals to strengthen oversight and accountability are long overdue:

Beefing up the President's Foreign Intelligence Board; [1]

Expanding the CIA's Inspector General corps; [2] and

A recognition that it is necessary to strengthen Congressional oversight—quite apart from whether a Joint Committee is the right answer.[3]

Some of the specific prohibitions are also indisputable:

The prohibition on drug testing; [4]

The ban on CIA domestic wiretapping.[5]

But, as laudable as some of the recommendations are, many of the others are either inadequate or, in fact, contradict basic lessons provided by the Commission's own findings—particularly with respect to protecting our constitutional rights. In some cases, the recommendations are little more than pious requests for the President and the CIA to obey the law. In others, the recommendations would go far to legalize the very abuses the Commission deplores.

Moreover, the recommendations systematically disregard the necessity of involving the Congress in defining the role and responsibilities of the Central Intelligence Agency. In many crucial areas the Commission proposes to short-circuit the legislative process that the circumstances require by means of Executive orders.

In this brief address, I want to start the debate on the appropriate remedies for the abuses and issues uncovered by the Commission report. The Senate select committee will be delving into these and other related matters in great detail, but nonetheless, I believe we can at least begin the dialog, starting with the recommendations in the Rockefeller report.

I will not try to deal with all 30 recommendations. Rather, I want to focus first on those areas which are usefully opened up by the report, but which require further treatment; and second on those areas in which I believe the recommendations are inadequate to the point of where our constitutional liberties could be jeopardized.

The subjects usefully addressed but not adequately considered include:

CIA relations with state and local police;

Constraints on physical surveillance;

The problem of overseas connections with domestic crime, especially narcotics;

Clandestine collection of foreign intelligence in the United States;

The responsibility for counterintelligence activities.

First, the report documents the fact that the relationship between the CIA and State and local law enforcement agencies has involved many questionable activities, the CIA's providing equipment and money to police and the police supplying to the CIA false identification documents and help in at least one break-in.[6]

Yet, the Commission makes no recommendations in this area. It simply calls for a change in these policies and urges that the CIA be more circumspect in its dealings with local law enforcement agencies.[7]

Now, the CIA's basic statute makes it very clear they are not to have any domestic law enforcement responsibilities. The need for, and nature of, any relationship between the CIA and domestic State and local law enforcement organizations must be carefully examined and explicitly set forth in law. This is essential if the prohibitions on CIA domestic police functions are not circumvented.

Second, the report points out that while electronic surveillance, wiretapping and bugging is controlled by statute, physical surveillance, and the use of undercover agents and informers is "largely uncontrolled by legal standards."[8] The problem of controlling physical surveillance and the use of agent informers is not peculiar to the CIA, but involves the FBI, the IRS, and other intelligence and investigative bodies.

The report should be commended for addressing the subject of the appropriate legal constraints on physical surveillance and on the use of agent informers, for these can raise fundamental questions of privacy and possibly constitutional rights. However, the only recommendation of the Commission is that in cer-

[1] Recommendation 5.
[2] Recommendation 9.
[3] Recommendations 3 and 4.
[4] Recommendation 23
[5] Recommendation 23
[6] Pp. 40–41, 236–240.
[7] Pp. 63, 64.

tain cases physical surveillance and the placing of undercover agents in domestic organizations be permitted on the say-so of the Director of the Central Intelligence Agency.[9] This is clearly not what is called for. The Senate must now ask Congress to go forward and thoroughly explore this area and arrive at a proper legislative solution.

Third, the report raises what might be called the general subject of the overseas connection to domestic crime, in the context of the problem of narcotics.[10]

Just as legitimate business concerns have now become multinational in scope, so criminal activity, especially in the field of narcotics, is an internationalized enterprise. The report is correct in cautioning the CIA against getting involved in police functions,[11] yet we must also consider what instruments are appropriate to monitor criminal activities abroad which, in time, end up as criminal activities at home. Again, this is an area requiring the most thorough and careful consideration by the Congress, so as to provide our Government with the appropriate instrumentalities for combatting crime but protecting our civil liberties.

Fourth, despite all the concern about clandestine CIA activities in the United States, the report of the Rockefeller Commission merely states that the authority of the CIA to engage in clandestine operations within the United States aimed at collecting information on foreign individuals or organizations is unclear and needs clarification.[12] How this is to be done is not clearly spelled out. Whether the CIA should have this responsibility has major implications for the permitted scope of CIA activities within the United States and the potential for abuse.

The Commission also did not address whether CIA or any other clandestine foreign intelligence operations in the United States would have any limits or checks. For example, would it be permissible to tap telephones, to break into embassies, to conduct surveillance of various kinds? And what about alleged entrapment of foreign diplomats, such as that which has been alleged against the CIA in New York City?

I can see there may be a legitimate need in this general area of intelligence, but whether, and how, clandestine collection of foreign intelligence in the United States is to be carried out must be carefully examined by the Senate select committee. Such operations can easily endanger our civil liberties, particularly if there are no external checks upon them.

This subject is closely related to another major issue which is raised, but not adequately treated, by the Rockefeller report. This is the role to be played by the Central Intelligence Agency in counterintelligence within the United States. Heretofore, that mission largely has been the province of the FBI. If I read them correctly, the recommendations of the Commission appear to move in the direction of granting the Central Intelligence Agency a major role in the conduct of counterintelligence operations in the United States.

Paragraph C of recommendation 2 grants to the CIA the authority to collect information about the domestic activities of U.S. citizens, whether by overt or covert means, if they are "persons suspected of espionage or other illegal activities relating to foreign intelligence."[13] The Commission calls for proper coordination with the FBI, but in so doing seems to relegate the Bureau to a secondary role.

The Commission recommendations concerning the proper role of the CIA and the FBI in regard to domestic intelligence activities can only be described as vague. Recommendation 2c and 1ec seem to suggest CIA preeminence in the field of counterintelligence, but the final recommendation, No. 30, simply calls upon the Director of Central Intelligence and the Director of the FBI to negotiate a detailed agreement setting forth their respective jurisdictions and submitting it for approval to the National Security Council.[14]

It is my firm view that this would be an inadequate procedure. The division of responsibilities between the FBI and the CIA in this delicate area must be made by Congress. Counterintelligence is the cutting edge of many of the abuses that have come to our attention. The Huston plan was developed in the name of counterintelligence. Cointelpro, that stumbling acronym, stands for counterintelligence program. Illegal mail opening was a counterintelligence program. And there are yet other counterintelligence activities that, in the course of the Senate select committee's investigation may well indicate the dangerous and possibly uncontrolled character of counterintelligence activities, as they have been conducted in the past. For this reason, I believe, it is essential that the Congress establish the proper guidelines clearly defining jurisdiction for the CIA and the FBI, and equally important, setting up a system accountability for the conduct of counterintelligence-type activities within the United States.

These, then, are what I consider to be some of the incomplete aspects of the findings and recommendations of the Rockefeller Commission. But there are other recommendations, most of them dealing directly with the issue of spying by the CIA on U.S. citizens, that are at best hopes rather than remedies, and at worst could contribute to legalizing the illegal. In these cases, the Commission either falls back on simply urging the President and the CIA to obey the law or proposes measures that would legitimize the abuses that have brought forth this investigation.

To get a clear picture of this problem, it is important to go behind the "don't" language of the recommendations and focus on the exceptions which constitute the list of "do's" for the CIA. The exceptions set forth a wide variety of actions the CIA can take toward Americans in the United States.

First, under recommendation No. 2, the CIA would be permitted to collect "information about the domestic activities of U.S. citizens, whether by overt or covert means," to evaluate, correlate, and disseminate analysis and reports about these activities and to store such information on "persons presently or formerly affiliated, or being considered for affiliation, with the CIA, directly or indirectly, or others who require clearance by the CIA to receive classified information."

They also would be able to do this on "persons or activities that pose clear threat to CIA facilities or personnel, provided the proper coordination of the FBI is accomplished."

They would also be able to do this with regard to any "persons suspected of espionage or other illegal activities relating to foreign intelligence, provided there is proper coordination with the FBI."

They also would be able to use information "received incidental to appropriate CIA activities and transmit it to agencies with appropriate jurisdictions, including, of course, law enforcement agencies."[15]

Critical aspects of this proposed authority are not defined. What is meant by "affiliation"? What is meant by "indirect affiliation"? How does one define persons or activities posing a clear threat to CIA facilities or personnel? How does one define "illegal activities relating to foreign intelligence"?

Second, the CIA is authorized to conduct mail covers,[16] albeit in compliance with postal regulations, and in the furtherance of the CIA's legitimate activities, on a selected basis in matters involving national security. If past practice is considered, postal regulations are inadequate to protect citizens' rights and the restriction of mail covers to furtherance of the CIA's legitimate activities in matters of national security imposes no real restraint. Only the injunction to be selective is mildly controlling.

Third, the CIA is authorized to infiltrate dissident groups or other organizations of Americans upon "a written determination by the Director of Central Intelligence that such action is necessary to meet a clear danger to Agency facilities, operations, or personnel and that adequate coverage by law enforcement agencies is unavailable."[17] Note that none of these terms are defined and that it is left to the discretion of the Director of Central Intelligence to decide what is a danger to the Agency and whether other law enforcement agencies are providing adequate support.

Fourth, the CIA would be authorized to conduct its own investigations of individuals presently or formerly affiliated with it. This would be done on the authority of the Director of Central Intelligence alone, once he determines that the investigation is necessary to protect intelligence sources and methods, the disclosure of which "might," let me stress "might," endanger the national security.[18]

[9] Recommendation 16.
[10] pp. 233–234.
[11] p. 39.
[12] p. 59.
[13] P. 39.
[14] P. 13.
[15] P. 21.
[16] P. 29.

This particular provision, recommendation No. 18, also makes the point that such investigations must be coordinated with the FBI whenever substantial evidence suggesting espionage or violation of Federal criminal statute is discovered. This, of course, raises the question whether such investigations may go on when there is no substantial evidence suggesting espionage or violation of Federal criminal statutes. In this connection, it should be pointed out that to permit investigations of individuals in cases where the national security merely might be endangered, and in ways that are not defined runs the same grave risks of abusing the concept of national security we found in the Watergate case.

Finally, recommendation No. 22 makes clear that physical surveillance of Agency employees, contractors, or related personnel—whatever that might mean—can be conducted within the United States on the written approval of the Director of Central Intelligence.

I do not believe that the Congress or the American people can accept proposals whereby undefined categories of American citizens can be spied upon, their privacy invaded, and possibly their constitutional rights suspended, on the voucher of the Director of Central Intelligence. It is ironic that these provisions would go far to legitimize precisely the various abuses cited in the report and which has given rise to such great public concern.

The Rockefeller Commission would place reliance on the personnel involved, on the Inspector General and on a beefed-up President's Foreign Intelligence Advisory Board to see that such spying was kept in bounds. All this would be control after the fact, and the only positive check would be the Director of Central Intelligence, who, in the past, has often been a witting handmaiden to Agency abuses.

It seems strange, that with all this new Executive machinery, there is no reference to the role of Congress, or in fact, the public, as the real check on future abusive secret domestic intelligence operations. This is a fundamental defect of the Rockefeller Commission report: Past abuses are to be remedied only by Executive orders and the responsibility for avoiding abuses is left largely in the hands of the institutions which abused their powers in the past. Indeed, the report recommends giving them more explicit authority to investigate American citizens.

Mr. President, running through the Rockefeller Commission report, following the recital of some very serious invasion of American liberties and the destruction of due process with respect to many American citizens, there is a series of recommendations.

In effect, it says we will let the Director see if he cannot do better next time.

There are practically no recommendations for legal changes. Most of the recommendations involve internal regulatory changes which, in effect, leave the executive free to do as he pleases despite a record of very serious transgressions of American civil liberties.

Mr. President, there are no strict recommendations for legal changes which they make. In effect, it calls for the adoption of an Official Secrets Act here in the United States. We never have had one, and what it would say, in effect, is that anything in effect that is classified by an executive department official would then be protected by the force of criminal law from disclosure. It would for the first time in our Nation's history make it illegal and subject to criminal penalties for a public official in Government to disclose or be part of a conspiracy to disclose so-called official secrets.

The irony of this recommendation is that it would probably in the future prevent the public from knowing about transgressions and violations of the law of the kind we are now investigating here before the Senate Select Committee on Intelligence.

If that were the law the last few years, it is probably likely that the American people would never have known, indeed could not conduct an investigation to determine, whether their civil liberties had been interfered with by the CIA or other governmental agencies.

I would say that that recommendation is seriously deficient. It is based on European practice. In many European countries, particularly Great Britain, they are now beginning to doubt the wisdom of their own official secret acts.

Mr. President, once again it seems to me we have to decide what is important in American life and, above all, it seems to me it is our system of freedoms and liberties.

The Government is saying, "Trust us, although we have abused these liberties in the past, we are now forewarned and you can trust us in the future."

I believe that we need trust, but I also think that the exercise of governmental power when uncontrolled, when undisclosed to the public, when unrestricted by clear laws, can be very dangerous in the hands of those who hold it.

This suspicion goes back to really the basis of our Constitution.

As Thomas Jefferson once wrote:

> It is the tendency of things that freedom retreats and Government gains ground.

Thus we should not be surprised to find that when it comes to muzzling the stories that finally led to the current exposure of domestic wrongdoings and the long-overdue Senate inquiry, the Commission has no trouble coming up with proposals supporting legislation for an official secrets act. It endorses the idea of a statute which would make it—

> A criminal offense for employees or former employees of the CIA willfully to divulge to any unauthorized person classified information pertaining to foreign intelligence or the collection thereof obtained during the course of their employment. (Recommendation 21.)

Unless we are careful about the ways in which we develop our laws, our administrative control and the relationship of those agencies to the Congress, we can well once again see the commencement of what can only be described as a secret police here in our own country.

Now please note that this recommended statute would operate even if no harm were done to the national defense or to our diplomacy. And it does not apply to espionage—that already is a crime. But it would apply to the revelation of wrongdoing if the information were classified. To reveal the spying on Americans, the opening of their mail, the bugging of their phones, or plots to assassinate foreign leaders all could put you in jail.

The Commission asks that this statute be drafted with appropriate safeguards for the constitutional rights of all affected individuals. This is a laudable, but a conflicting, objective. Moreover, it avoids the key issue, which is that this law would impede the kind of scrutiny that the Commission report makes clear is necessary.

How much of the information in the report, I wonder, was secret or top secret only a few months ago? Without public disclosure, most of the abuses documented in the report would never have been corrected. Yet, this law, proposed by the Commission, could help insure that public scrutiny would never happen again.

I want to emphasize that we need to be able to protect legitimate secrets from our potential adversaries. But we need even more to protect our constitutional rights. The burden of proof for more laws than we have already must lie upon the executive branch. Those who make and try to keep secrets must prove that they are justified in doing so.

I am not revealing any secrets when I say that the committee is concluding a study of "leaks" to see whether "national security" in fact has been endangered in the past. At this point it seems likely that the greatest percentage of leaks concern political issues that should in fact be debated in open democratic processes. The agencies will be asked to provide their "damage assessments" of the so-called leaks that have occurred in the last several years.

In 1970, the Defense Science Board found that the volume of classified scientific and technical information could be reduced by 90 percent. I do not know if this percentage would also apply to diplomatic secrets, but everyone dealing with the Federal Government is aware of the penchant for bureaucrats to classify all manner of documents, sometimes to draw attention to them and sometimes to cover up bungling, mistakes, errors of judgment, or just plain embarrassments—not to mention misdeeds and crimes.

Now, this is a pretty convenient device for protecting one's power and image. I daresay many of us in this chamber would like to be able to classify some of the things that we say, once we have had a chance to think about them.

The United Kingdom has an Official Secrets Act of this type that is apparently being proposed by the Rockefeller Commission. The indications are that it is not working. A few years ago, in fact, a royal commission was appointed, which was headed by Lord Franks, which thoroughly considered all of the difficulties which had been encountered in their Official Secrets Act. Their conclusion was

that the law was far too open ended and must be thoroughly revised.

Public exposure is the ultimate sanction against violation of our constitutional rights in this society. We must not compromise this away. The basic question that must be faced is whether the recommendations of the Rockefeller Commission, taken in their entirety, so insure proper operation of the CIA that we can forgo the crucial protection afforded all other democratic rights by the first amendment of the Bill of Rights. As James Madison reminds us—

> The right of freely examining public character and measure, and of free communication thereon is the only effective guardian of every other right.

The Rockefeller Commission, says of the Bill of Rights that these freedoms are not absolute. The report states that the first amendment, as Justice Holmes noted—

> Does not "protect a man in falsely shouting 'fire' in a theater and causing a panic."

The Rockefeller Commission apparently believes that this justifies an Official Secrets Act.

But the revelations which led to the Senate inquiry and to the Rockefeller Commission have not proved false. In my view, they are much closer to a man truthfully shouting "fire" in a theater and thus saving lives. The Official Secrets Act proposed by the Rockefeller Commission could in effect make it a criminal offense to sound the alarm when our rights and our democratic institutions are jeopardized by secret Government operations.

In reviewing these concerns about the recommendations of the Rockefeller Commission, I am led to object to one of the report's most basic conclusions. The Rockefeller Commission report states that—

> The evidence within the scope of this inquiry does not indicate that fundamental rewriting of the National Security Act is either necessary or appropriate.

I believe that this is clearly wrong. It is absolutely necessary for the Congress itself to write the most explicit guidance in law that it possibly can concerning the authority, and the jurisdiction, of the CIA, of the FBI, and of the other Federal investigatory bodies. It is absolutely appropriate for the Congress to draw a line between what is proper and what is not, both at home and abroad. We must make clear the conditions and terms under which various CIA activities can take place and on who's sayso. We must define or replace such terms as "national security," "sources and methods," and so forth.

For the American people to once again have confidence in its Government, and in its intelligence operations, this difficult task of reconciling liberty and freedom on the one hand, and the requirements of national security and secrecy on the other, must not be left solely to the executive branch; it must be an act of consensus, taken by the entire Federal Government, and in particular, the representatives of the people in Congress.

Laws alone are not enough, as we have already seen. Many laws on the statute books has been violated or disregarded by the Central Intelligence Agency. Law must be accompanied by the enforcement of adequate oversight. We need both a new legislative framework and a new political framework, within which intelligence operations take place.

The system of accountability must not stop with the President. It must embrace the Congress. I hope that the President's referral of the subject of assassinations to the Senate is a sign of a desire to have the Congress exercise its rightful role in these ultimate and most difficult of responsibilities in Government.

Any domestic CIA activities must be carefully monitored by the congressional oversight bodies. Any wrongdoing must be brought to the attention of the Congress and the congressional oversight bodies. And this oversight system, whether it involves a joint committee, a special committee, or the existing committees, must be as representative as possible—possibly even including rotating membership. The key to increased confidence of the American people in our intelligence and investigatory bodies for them to know that their views are included in the process by which decisions are made and authority is granted.

Our Founding Fathers were keen observers of human nature. They knew that the only way power and liberty could coexist was to pit ambition against ambition.

Thus, in the final analysis, relying on the basic principle of government by checks and balances is the only way to restore the confidence in our intelligence agencies so they can get on with their basic and vital job.

In considering this question of confidence, I am reminded of Thomas Jefferson's clear exposition on the issue and how it relates to the preservation of democracy. In the Kentucky Resolution of 1798, he said:

> It would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is every where the parent of despotism: free government is founded in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited Constitution to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which and no further our confidence may go.

It seems to me that is essentially the direction in which we must consider the report of the Rockefeller Commission and with which we must approach the task of dealing with the transgressions of intelligence collecting agencies in our society over the past several years.

DETERMINATION OF SENATE ELECTION IN NEW HAMPSHIRE

The PRESIDING OFFICER (Mr. GARY W. HART). Under the previous order, the Senate will now resume the consideration of Senate Resolution 166, which the clerk will state.

The assistant legislative clerk read as follows:

> A resolution (S. Res. 166) relating to the determination of the contested election for a seat in the U.S. Senate from the State of New Hampshire.

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. MANSFIELD. To be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[Quorum No. 45 Leg.]

Allen	Hart, Gary W.	Pastore
Clark	Mansfield	Ribicoff
Griffin	Nunn	

The PRESIDING OFFICER. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

Pending the execution of the order, the following Senators entered the Chamber and answered to their names:

Abourezk	Glenn	Moss
Baker	Goldwater	Muskie
Bartlett	Gravel	Nelson
Bayh	Hansen	Packwood
Beall	Hart, Philip A.	Pearson
Bellmon	Hartke	Pell
Bentsen	Haskell	Percy
Biden	Hathaway	Proxmire
Brock	Helms	Randolph
Brooke	Hollings	Roth
Bumpers	Hruska	Schweiker
Burdick	Huddleston	Scott, Hugh
Byrd, Harry F., Jr.	Humphrey	Scott, William L.
Byrd, Robert C.	Inouye	Sparkman
Cannon	Jackson	Stafford
Case	Javits	Stennis
Chiles	Johnston	Stevens
Church	Kennedy	Stevenson
Cranston	Laxalt	Stone
Culver	Leahy	Symington
Curtis	Long	Taft
Dole	Magnuson	Talmadge
Domenici	Mathias	Thurmond
Eagleton	McClellan	Tower
Eastland	McClure	Weicker
Fannin	McGovern	Williams
Fong	McIntyre	Young
Ford	Metcalf	
Garn	Mondale	
	Morgan	

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. TUNNEY), and the Senator from Wyoming (Mr. McGEE) are necessarily absent.

I also announce that the Senator from New Mexico (Mr. MONTOYA) is absent because of death in the family.

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY), and the Senator from Oregon (Mr. HATFIELD) are necessarily absent.

The ACTING PRESIDENT pro tempore (Mr. LEAHY). A quorum is present. Who yields time?

Mr. CANNON. Mr. President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. We are now in the 1 hour of debate preceding the vote on cloture.

Mr. CANNON. What time will the live quorum commence?

The ACTING PRESIDENT pro tem-

tors that I am proposing would be self-supporting, with the company or country requesting the service paying a USDA fee.

The Senate Agriculture Committee has begun hearings on the grain inspection scandal. I hope the House will decide to move on this problem soon as well. We cannot allow our grain exports to be imperiled by corruption, I am convinced that we must act promptly in order to maintain foreign grain customers.

ENERGY SELF-SUFFICIENCY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. BEDELL) is recognized for 5 minutes.

Mr. BEDELL. Mr. Speaker, in recent months we have heard much discussion in this Chamber about the need for reducing our dependence on foreign sources of oil and for attaining greater energy self-sufficiency. There is little disagreement over the importance of these goals. However, securing a consensus on a program for achieving them is an entirely different matter.

The administration's energy program seeks to raise U.S. fuel prices to artificially high levels in order to discourage consumption and encourage domestic investment in energy exploration, research and development. On the international front, administration officials are attempting to secure agreement among the oil-consuming nations to negotiate with the oil producers for a minimum floor price for foreign oil. At home, President Ford has called for the decontrol of domestic oil prices and the deregulation of natural gas, and has proposed an ERDA budget that places a distinctly top priority on nuclear development and synthetic fuel production.

The focal point of the administration's energy strategy is high oil prices. We are all aware of how the OPEC cartel has administered the international price of oil. In the last 18 months, OPEC has increased the price of oil fivefold, and it has just announced that it plans another increase for September.

The administration's response to this price fixing has been to advocate the negotiation of a minimum floor price for foreign oil. And, what is even more disturbing, administration spokesmen continue to argue that the price of domestic oil should be allowed to rise to OPEC levels.

In my view, this high-price energy strategy is an unnecessarily risky policy that holds ominous implications for the American people and the American economy. Rather than stoically accepting, and indeed even encouraging, high energy prices, we should be implementing a program designed to force down the excessively high price of oil, both foreign and domestic. Higher and higher prices will only prolong the recession and contribute to greater inflation while further increasing the profits of the international oil companies and decreasing the purchasing power of the American people.

What this Nation needs is an energy program that will help it gain control of its energy future [illegible] domestic economy. Instead of imposing high prices on the American people, such a program should emphasize reasonable and equitable conservation measures and encourage greater competition in determining the price of oil. Such a program would be compatible with our effort to reduce domestic energy consumption and expand research and development on alternative sources of energy.

In an excellent editorial published in the June 24 edition of the New York Times, Congressman ANDREW MAGUIRE of New Jersey addresses the critical issue of domestic oil prices. His comments merit careful reflection, and I commend them to my colleagues.

The editorial follows:

OPEC AND ITS PARTNERS IN MONOPOLY

(By Andrew Maguire)

WASHINGTON.—The Organization of Petroleum Export Countries is a cartel that sets the price of oil produced in the Arab states. It should not, however, set the price of oil produced and consumed in America.

Even Treasury Secretary William Simon admits the OPEC price is unrelated to economic reality, to cost, or to alternative energy sources; it is political. As OPEC considers yet another price increase—to five times the 1973 level for imported oil—it is astonishing that Mr. Simon and the Ford Administration still argue that the price of oil should rise to whatever level OPEC chooses.

We must reduce wasteful consumption, cut back on foreign imports, and increase all energy supplies. But these needs—on which Congress and the Administration agree—neither justify nor require domestic oil prices four times what they were two years ago. Such prices would aggravate both inflation and recession—a disaster for the economy and for the consumer.

Four months after the oil embargo, Congress passed an energy bill rolling back the maximum price of new, domestic oil from the $11 OPEC price to $7.09 a barrel. President Nixon vetoed the bill.

Because of that veto, we paid $19-million more for less domestic oil in 1974 than in 1973. Two years ago the average price of domestic oil was $3.50 a barrel; a year later it was $7.05. And as a result, the oil industry's after-tax return on equity has risen to a level nearly 50 per cent higher than the business average. If the Ford Administration has its way, and all price controls are lifted, the price will hit $13 a barrel and more which, combined with Mr. Ford's two $1 tariffs, will cost the economy at least $36 billion.

If, instead, domestic oil prices were rolled back to a level closer to what a truly free market would set, we would save about $7 billion a year. Such a rollback would free dollars now wasted in inflated fuel prices to be spent in depressed areas of the economy. The $7-billion figure, developed from Library of Congress studies, assumes the price of "old oil" is rolled back from $5.25 a barrel to $4.25 a barrel and the price of "new oil" is reduced from $11-plus a barrel to no more than $7 a barrel. This policy would guarantee the oil companies average prices 50 per cent greater than they charged just two years ago.

The industry argues that it needs unlimited prices and profits as "incentives" to drill more domestic oil. But industry apologists did not discover $7 to be an inadequate incentive until *after* oil prices hit $11. In 1972, the National Petroleum Council estimated the average price would have to rise to $3.65 a barrel by 1975 to stimulate maximum production. Yet, as new domestic oil prices have tripled, domestic production has continued [illegible] industry [illegible]

that availability of oil and equipment and personnel shortages—not price—are the real constraints on production, once the price goes beyond $7.

The other major opposition to restraining domestic oil prices comes from idealogues in the Ford Administration whose opposition to economic action by a democratic government is so great that they see a competitive market where none exists. Their concern for free enterprise is commendable, but they ignore the facts. Foreign oil prices are set by an organized cartel and the price of domestic oil has risen to meet it. That is not competition; that is shared monopoly. And so long as monopoly power influences the price of domestic oil, it must be restrained.

The House Commerce Committee has adopted a price rollback, authored by Representative Bob Eckhardt of Texas, setting an average price ceiling on domestic oil of $7.50 a barrel. While somewhat more generous to the oil industry than the costs of production justify, the Eckhardt amendment will save consumers billions of dollars in inflated energy costs. The Energy Emergency Act of 1974 directed that the price of American oil would be set in America, not around a conference table of Arab oil producers. President Nixon vetoed that bill, but the Eckhardt amendment provides Congress an opportunity to act again this year, with a new President and a new majority in Congress.

INVESTIGATION AND PROSECUTION OF OFFENSES RELATING TO ILLEGAL CIA DOMESTIC INTELLIGENCE ACTIVITIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. BADILLO) is recognized for 10 minutes.

Mr. BADILLO. Mr. Speaker, in recent months, we have witnessed growing public awareness and concern over invasions of privacy and surveillance of private citizens by agencies of the U.S. Government. These feelings have been fueled by allegations in the press and subsequent information released by various Federal officials about the extent to which illegal, improper, and unethical activities were engaged in by agencies of the Federal Government in carrying out domestic intelligence and surveillance functions. Last week the public learned of the shocking magnitude of these activities when the President finally released the "Report of the Commission on CIA Activities Within the United States."

The statements contained in the Rockefeller Commission's report clearly indicate that persons, in performing various intelligence and surveillance activities on behalf of the CIA, exceeded that agency's lawful authority and violated the individual rights and liberties of American citizens as protected by the Constitution and many Federal statutes. These appears to be little question that the conduct of such acts went far beyond that which was vital to protect the national security of the United States.

The term "national security" is a broad, vague generality. Its contours should not be invoked to abrogate the fundamental law embodied in the first amendment and specific statutes designed to protect individual freedoms and privacy. Based upon the comments of the Rockefeller Commission, one must conclude that the [illegible] of the CIA's domestic

surveillance activities were beyond the law, to an extent which approached the erosion of constitutional government.

I am therefore, both shocked and dismayed at the wholly inadequate measures proposed to remedy these abuses, including the prosecution of any persons associated with the CIA or other Government intelligence or law enforcement agencies for acts which the Rockefeller Commission states had been "plainly unlawful."

We are told that the CIA conducted illegal mail intercepts, with the knowledge of at least three Postmasters General, opening, examining and photographing thousands of letters belonging to private citizens and at least one Member of this very body. Yet the Commission would merely have the President direct such operations be ceased.

We are told that the CIA collected information and compiled dossiers on thousands of Americans who did nothing more than exercise their constitutional right to dissent. Yet the Commission would only have these files destroyed.

We are informed that the CIA engaged in a wide variety of illegal activities against members of the news media in an effort to discover news sources. And yet the Commission would suggest only that guidelines be promulgated by the CIA itself in order to limit the number of reoccurrences.

The litany goes on and on, running the whole gamut of activities from bugging and burglary to wiretapping and physical surveillance, by the CIA alone, by the CIA and the FBI, by the CIA in conjunction with the White House, and finally by the CIA enlisting the assistance of organized crime in alleged assassination plots against foreign government officials.

The concept of the CIA conducting its own house cleaning and putting itself back in order would not seem so illusory, were we able to rely on an adequate system of checks and safeguards to discover actual and potential abuses. However, given the findings of the Rockefeller Commission, that the Department of Justice, the various Postmasters General, and the several law enforcement and investigative agencies of the executive branch refrained from investigating and even acted in complicity with the CIA, conclusively demonstrates that there is not and cannot be such a system. Indeed the events of the last several years have raised serious questions about the willingness and ability of the intelligence and investigative agencies of the executive branch to police themselves, let alone initiate needed reform.

Obviously, the Congress must enact legislation designed to insure that such abuses will no longer be permitted to take place in our free society. I am hopeful that the select committees in both the House and Senate now conducting their own independent investigations of the CIA and other intelligence and law enforcement agencies of the Federal Government will call for appropriate legislative action. I trust that the President will also forward to the Congress his recommendation in this area. However, we need not delay action while these committees undertake their investigations. For example, the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice has been investigating the question of illegal surveillance and has pending before it legislation which would end the practices of warrantless surveillance techniques. As a member of that subcommittee I intend to advocate early committee action to bring this legislation to the floor of the House. Similarly, the House Judiciary Subcommittee on Civil and Constitutional Rights, with oversight jurisdiction over the FBI, has been other questions with respect to the illegal surveillance of American citizens, including abuses of information and files. Given the evidence already obtained by the subcommittee, I urge my colleagues on that subcommittee to prepare appropriate legislation to end such practices.

Finally, there is the serious question of an investigation and possible prosecution of all offenses and violations of any Federal statute by persons by or on behalf of the CIA or any other intelligence or law enforcement agency of the Federal Government arising out of the conduct of domestic intelligence or counterintelligence activities.

President Ford expressed his concern about this question during his press conference on June 9, 1975, stating that he would "ask the Attorney General to study all the materials gathered by the Commission on any matter to determine whether action should be undertaken against any individuals." According to a story in this morning's Washington Post, the Attorney General is shocked by the still secret unpublished information he has seen on the CIA's activities and plans to proceed with an investigation. However, he added that it may take 2 or 3 months to decide how to proceed.

I advocate an immediate investigation and take strong exception to granting the Attorney General and Department of Justice the responsibility for pursuing this matter. I call your attention to page 14 of the Rockefeller Commission's report. It states, with respect to responsibility for the supervision and control of the CIA:

> The Department of Justice also exercises an oversight role, through its power to initiate prosecutions for criminal misconduct. For a period of over 20 years, however, an agreement existed between the Department of Justice and the CIA providing that the Agency was to investigate allegations of crimes by CIA employees or agents which involved Government money or property or might involve operational security. If, following the investigation, the Agency determined that there was no reasonable basis to believe a crime had been committed, or that operational security aspects precluded prosecution, the case was not referred to the Department of Justice.
>
> The Commission has found nothing to indicate that the CIA abused the function given it by the agreement. The agreement, however, involved the Agency directly in forbidden law enforcement activities, and represented an abdication by the Department of Justice of its statutory responsibilities.

Under the circumstances, one must question the ability of the Department of Justice to conduct a proper and aggressive investigation. It is for this reason that I have today introduced legislation to provide for the appointment of a special prosecutor with exclusive jurisdiction to investigate and to prosecute offenses arising out of the CIA's domestic intelligence and surveillance activities.

I firmly believe that only through the establishment of an independent prosecutor will the questions raised by the Rockefeller Commission be answered to the satisfaction of the American people and restore their trust and confidence in our constitutional government.

The framers of our Constitution, aware of the need to both defend a new nation and prevent abuses by government, sought to give our society strength and security by providing that freedom of speech, press, religion, and assembly should not be abridged. They recognized that activities to protect our Nation's security at the expense of representative government would provide no real security for our Republic. This thought was eloquently expressed in 1937 by Mr. Chief Justice Hughes:

> The greater importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government. (De-Jonge v. Oregon, 299 U.S. 353, 365 (1937).

I urge my colleagues to review the legislation I have introduced today. I welcome their comments and support. The following is the text of the bill:

H.R. 8281

A bill to provide for, and assure the independence of, a Special Prosecutor, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Special Prosecutor Act of 1975".

APPOINTMENT OF SPECIAL PROSECUTOR

SEC. 2. (a) The United States District Court for the District of Columbia, sitting en banc, shall appoint a panel of three of its members, hereinafter in this Act referred to as "panel". Any vacancy on the panel shall be filled in the same manner as the original appointment.

(b) The panel is empowered to and shall promptly appoint a Special Prosecutor, who shall head an Office of Special Prosecutor, and to fill any vacancy which may occur in the position of Special Prosecutor.

(c) Participation in the selection of the panel shall not in and of itself disqualify a judge in any proceeding in which the Office of Special Prosecutor is involved. However, a judge who serves on the panel is disqualified from participating in any proceeding in which the Office of Special Prosecutor is involved.

COMPENSATION AND STAFFING

SEC. 3. (a) The Special Prosecutor shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code

(b) The Special Prosecutor may employ and fix the compensation of personnel in the Office of Special Prosecutor as he reasonably determines to be necessary, without regard

to the provisions of [illegible] Code, governing appointments in the competitive service, and without regard to chapter 54 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates), but at rates not to exceed the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(c) The Special Prosecutor may procure personal services of experts and concultants, as authorized by section 3109 of title 5, United States Code, at rates not to exceed the per diem equivalent of the rate for GS–18 of the General Schedule established by section 5332 of title 5, United States Code.

(d) Every department or agency of the Federal Government is authorized to make available to the Special Prosecutor, on a reimbursable basis, any personnel the Special Prosecutor may request. Requested personnel shall be detailed within one week after the date of the request unless the Special Prosecutor designates a later date. An individual's position and grade in his department or agency shall not be prejudiced by his being detailed to the Special Prosecutor. No person shall be detailed to the Special Prosecutor without his consent.

(e) For the purposes of subchapter III of chapter 73 of title 5, United States Code, the Special Prosecutor and the personnel of the Office of Special Prosecutor shall be deemed employees in an executive agency.

JURISDICTION AND AUTHORITY OF THE SPECIAL PROSECUTOR

SEC. 4. (a) The Special Prosecutor has exclusive jurisdiction to investigate and to prosecute in the name of the United States—

(1) all offenses or allegations of offenses arising out of the conduct of domestic intelligence or counter-intelligence activities and the operation of any other activities within the United States by the Central Intelligence Agency or any other intelligence or law enforcement agency of the Federal Government;

(2) all violations or suspected violations of any Federal statute by any intelligence or law enforcement agency of the Federal Government or by any persons by or on behalf of any intelligence or law enforcement agency of the Federal Government including but not limited to surreptitious entries, surveillance, wiretaps, or illegal opening or monitoring of the United States mail; and

(3) such related matters which he consents to have assigned to him by the Attorney General of the United States.

(b) The Special Prosecutor is authorized to take any action necessary and proper to perform his functions and carry out the purposes of this Act, including—

(1) issuing instructions to the Federal Bureau of Investigation and other domestic investigative agencies of the United States for the collection and delivery solely to the Office of Special Prosecutor of information and evidence bearing on matters within the jurisdiction of the Special Prosecutor, and for safeguarding the integrity and inviolability of all files, records, documents, physical evidence, and other materials obtained or prepared by the Special Prosecutor;

(2) conducting proceedings before grand juries;

(3) framing and signing indictments;

(4) signing and filing informations;

(5) contesting the assertion of executive privilege or any other testimonial or evidentiary privilege;

(6) conducting and arguing appeals in the United States Supreme Court, notwithstanding the provisions of section 518 of title 28, United States Code;

(7) instituting, defending, and conducting civil and criminal litigation in any court; and

(8) exclusively performing the functions conferred upon the Attorney General of the United States Code (relating to immunity of witnesses), with respect to any matter within his exclusive jurisdiction.

DELEGATION

SEC. 5. The Special Prosecutor is authorized to delegate any of his functions to personnel of the Office of Special Prosecutor, and to experts and consultants retained pursuant to section 3(c).

TRANSFER AND ACQUISITION OF FILES AND INFORMATION

SEC. 6. (a) All files, records, documents, and other materials in the possession or control of the Department of Justice, or any other department or agency of Government, which relate to matters within the exclusive jurisdiction of the Special Prosecutor appointed under this Act, are transferred to the Special Prosecutor as of the date on which he takes office.

(b) The Special Prosecutor is authorized to request from any department or agency of the Federal Government any additional files, records, documents, or other materials which he may deem necessary or appropriate to the conduct of his duties, functions, and responsibilities under this Act, and each department or agency shall furnish such materials to him expeditiously, unless a court of competent jurisdiction shall order otherwise.

(c) The Special Prosecutor shall keep inviolate and safeguard from unwarranted disclosure all files, records, documents, physical evidence, and other materials obtained or prepared by the Office of Special Prosecutor.

GENERAL SERVICES ADMINISTRATION

SEC. 7. The Administrator of General Services shall furnish the Special Prosecutor with such offices, equipment, supplies, and services as are authorized to be furnished to any agency or instrumentality of the United States.

SPECIAL PROSECUTOR'S TERM OF OFFICE

SEC. 8. (a) The Office of Special Prosecutor shall terminate three years after the date the panel first appoints a Special Prosecutor.

(b) Notwithstanding the provisions of subsection (a), the Office of Special Prosecutor is authorized to carry to conclusion litigation pending on the date such office would otherwise expire.

REPORTS

SEC. 9. The Special Prosecutor shall make as full and complete a report of the activities of his office as is appropriate to the panel, to the Attorney General of the United States, and to the Congress, on the first and second anniversaries of his taking office and not later than thirty days after the termination of the Office of Special Prosecutor.

REMOVAL OF SPECIAL PROSECUTOR

SEC. 10. The panel has the sole and exclusive power to remove the Special Prosecutor. The only grounds for removal are gross dereliction of duty, gross impropriety, or physical or mental inability to discharge the powers and duties of his office.

EXPEDITED REVIEW PROCEDURE

SEC. 11. (a) The sole and exclusive procedure for the review of the validity of any provision of this Act shall be as follows:

(1) Any defendant who challenges the validity of this Act in a criminal case or proceeding shall file a motion to discuss not later than fifteen days after service of the indictment or information. Such motion shall be heard and determined by a district court of three judges, convened pursuant to section 2284 of title 28, United States Code, as soon as possible but in no case later than twenty days after the filing of the motion.

(2) Any person who challenges the validity of this Act in connection with a civil action or proceeding shall do so by motion filed with the appropriate United States district court. The district court shall immediately certify such motion to be heard and determined by a district court of three judges convened pursuant to section 2284 of title 28, United States Code, as soon as possible but in no case later than twenty days after the filing of the motion.

(3) Not later than fifteen days after the determination of the district court of three judges under paragraph (1) or (2) of this section, any party may file an appeal from that determination in the United States Supreme Court. The Supreme Court shall expedite to the greatest extent possible its decision on such appeal.

(b) The expedited review procedure of this section shall not apply to any challenge to the validity of any provision of this Act insofar as any question presented shall have been previously determined by the Supreme Court, notwithstanding that the previous determination occurred in litigation involving other parties.

FUNDING

SEC. 12. There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act, and, notwithstanding any other provision of law, the Special Prosecutor shall submit directly to the Congress requests for such funds as he considers necessary to carry out his responsibilities under this Act.

SEVERABILITY

SEC. 13. If the provisions of any part of this Act, or the application thereof to any person or circumstances, are held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

WAYS AND MEANS OVERSIGHT SUBCOMMITTEE STAFF STUDY FINDS DISCLOSURE OF MEDICARE INSPECTION REPORTS A FAILURE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. VANIK) is recognized for 5 minutes.

Mr. VANIK. Mr. Speaker, in 1972, the Congress enacted legislation to improve the Social Security Act. Many of these amendments were designed to reform the operation of the medicare program. Among these reforms was section 299D providing for public disclosure of survey reports on institutions such as nursing homes, labs, and hospitals.

This provision first passed the Senate in 1970 and was again added to H.R. 1 by the Senate Finance Committee in 1972. As the Senate report stated:

At present, information as to whether a hospital, skilled nursing facility, or other organization fully meets the statutory and regulatory requirements relating to conditions for participation for medicare and medicaid or whether it has significant deficiencies, is generally available only to the facility involved, and certain State and Federal agencies. Physicians and the public, in general, are currently unaware as to which institutions have significant deficiencies and which do not.

As a result, the committee pointed out that—

The Committee believes that in the absence of public knowledge about the nature and extent of deficiencies of individual facilities, it is difficult for physicians and the public to rationally choose among health care facilities.

In addition, the committee noted:

This lack of information makes it nearly impossible to effectively direct (public) con-

power, Korea would be perceived by Japan as a threat. If that unfriendly power were to control the waters between Korea and Japan, that threat would be real, and Japan would have to make some reaction to it.

For that reason, continued United States interest in an independent South Korea is important to Japan. It is also important to another Asian nation, a nation with significant diplomatic interests in common with the United States—the People's Republic of China. A unified Korea in the hands of an unfriendly power would also be a threat to China. It would be a gateway to Manchuria, the industrial heartland of China. China is thus also interested in seeing that Korea is not dominated by an unfriendly power—and today, unlike 25 years ago, China realizes that the United States is a friendly power, with no desire for hegemony in Asia.

South Korea is also important in its own right. It has developed into a major industrial nation, with a rising standard of living and with important trade connections to the United States.

South Korea is an example of a situation where the United States can and should maintain a military committment to an ally. The land forces of South Korea are extensive and of high quality; and South Korea thus provides the land force element which is not an appropriate American contribution to any possible future conflict arising from North Korean aggression. The United States is enabled by the South Korean development of adequate land forces to provide to the alliance those forces which we are best suited to provide: air and sea forces. Such an arrangement is appropriate to the best interests and to the capabilities of both parties, and creates a situation where the advantages of alliance outweigh any possible disadvantages.

It is thus in our interest to maintain our alliance with Korea, and to make clear to North Korea, through our declarations, our unmistakable resolve to aid our South Korean ally in the event of North Korean aggression. We must never repeat our error which led to the Korean war of 25 years ago, of stating that Korea does not constitute an important interest of the United States, and of giving the mistaken impression that we would not use military force to aid South Korea in the event of aggression. South Korea is an important ally of the United States, an ally which continues to maintain its own defense in such a way that the land war aspect of a Korean conflict would not have to fall on us. It is thus in our interest in every way to continue our committment to Korea. I have no doubt that we shall do so.

ADMINISTRATION FOOT-DRAGGING ON TRANSPORTATION LEGISLATION

Mr. BENTSEN. Mr. President, since I assumed the chairmanship of the Senate Transportation Subcommittee, I have attempted to work cooperatively with the administration in developing sound transportation legislation to bring before the Congress. I must reluctantly conclude, however, that this administration has assigned transportation proposals a low priority on the list of its national concerns.

Since March, my subcommittee has been promised a new highway bill. Scarcely a week passes that the White House and the Department of Transportation do not give us assurances that their proposals are on the way. Now it is June, and nothing has been forthcoming.

It is a sad commentary, Mr. President, on the White House and the various agencies in charge of transportation. We are moving through an energy scarcity, our rural roads are falling into decay, congestion and pollution still clogs our cities, many States are running out of Interstate money, and the administration remains silent.

I believe that transportation will become one of the major issues of the seventies, as more and more Americans are forced to ask serious questions about how often they travel, what kind of transportation they will use, and how they will get to work. Yet there is no leadership from the executive branch. What we need is a national transportation policy, a sense of transportation investment priorities, which will assure the American people that the most mobile Nation on earth will not become immobilized as our supplies of energy become imperiled.

I can no longer wait for the administration proposals. Today, I am announcing a comprehensive series of hearings on the future of the highway program and the importance of national transportation policy. In these hearings, which will center around specific issues, we will explore indepth the directions of transportation policy for this decade and beyond.

Our witness list includes administration witnesses; State, and local officials; citizens' and environmental groups; transit officials; academicians; and two former Federal Highway Administrators.

We expect these hearings to have an extra dimension, for we are dealing with a set of circumstances unlike any we have faced before. I have informed the witnesses that we do not want to hear a restatement of old arguments; we want to explore the premises underlying our transportation policy and leave ourselves open to a wide range of options, either to continue programs which are effective or to restructure the entire highway program.

Meanwhile, these witnesses should have the opportunity to review the administration's proposals. I urge the President, the Secretary of Transportation, and the Office of Management and Budget to end this inexcusable delay and to lay the administration proposals on the table so that my subcommittee and the Congress can debate them on the merits.

INTELLIGENCE ACTIVITIES OF THE UNITED STATES

Mr. MATHIAS. Mr. President, on May 8, 1975, the New York Times published a letter which I wrote concerning the need for a constructive review of U.S. intelligence efforts and the statutes which underlie, guide, and limit those efforts. Because this subject will be of continuing interest to the Senate during the months ahead, I ask unanimous consent that the text of my letter be printed in the RECORD together with a copy of Mr. Baldwin's article.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTELLIGENCE AGENCIES: A NEED FOR NEW LAWS

TO THE EDITOR:

Hansan Baldwin (Op-Ed May 8) puts his finger on many of the key issues in his call for a constructive examination by the Congress of U.S. intelligence activities. As a member of the Senate Select Committee to Study Government Operations with Respect to Intelligence Activities, I am convinced that the Senate can make a constructive investigation—and, indeed, that such an investigation is sorely needed.

In the aftermath of Watergate and following a series of shocking revelations of the abuse of power, it is clear that one of the most important tasks facing the Congress is to determine the proper role of intelligence agencies within our constitutional system of government. Thirty years' experience has proven that the existing legal foundation for our intelligence agencies, eestablished in 1947, is inadequate. It is necessary to write new laws, to draw new guidelines for our intelligence agencies.

That is why Senator Mansfield and I proposed in October of 1974 that the Senate establish a select committee to make a detailed study of the legal authorities of all U.S. intelligence agencies, foreign and domestic, and of the over-all U.S. intelligence requirements.

It is an astonishing fact, for example, that there is no specific authority for any covert operations by the C.I.A. anywhere in the law. In the past, it has been argued that the President was empowered by the National Security Act of 1947 to assign "intelligence activities" to the C.I.A., yet the law itself—or legislative history—does not reveal even the slightest suggestion that covert operations are subsumed under the meaning of "intelligence activities."

Covert activities of some kind might be necessary in some future circumstances. There must be sound guidelines consistent with constitutional guarantees. Moreover, the distinctions between foreign and domestic are far less clear now than they may have seemed in the years just following World War II.

Technological advance, a boon to the agencies, has proven to be a threat to constitutional guarantees. It is clear that secrecy and open democratic government have proven to be uneasy partners.

It is my view that there is a requirement for a thoughtful redefinition of our national intelligence needs. I am convinced that the Select Committee on Intelligence offers the best means of resolving the type of questions enumerated by Mr. Baldwin and in the nonpartisan, thorough and considered way demanded by the dimensions of the problem.

CHARLES MCC. MATHIAS, JR.,
U.S. Senator.

WASHINGTON, MAY 8, 1975.

ON U.S. INTELLIGENCE

(By Hanson W. Baldwin)

There is not much doubt that the K.G.B., the Soviet secret police, is gloating in Moscow.

In the last few months, exaggerated, inaccurate or irresponsible press accounts and self-serving politicians have greatly damaged United States intelligence organizations.

Some crippling restrictions already imposed are now being followed by extensive and numerous investigations into every facet of intelligence and counterintelligence, which may result in new and dangerous exposure of organizations, methods and personnel.

One of the most damaging and irresponsible leaks in United States intelligence history—the widely published accounts of the salvaging of the sunken Soviet submarine—already has occurred, with the media, in the name of freedom, damaging the defense of freedom.

Nor is it encouraging that The New York Times allowed the columnist Jack Anderson to trigger its own actions. The consequent publication by The Times and all other media of a fantastic technological feat and an intelligence coup still incomplete could cause immense potential damage. One need only recall the broken codes of World War II, and, in recent history, the nasty surprises new Soviet weapons provided in Vietnam and in the 1973 Arab-Israeli war.

The current investigations, therefore—unless they are to be of great aid and comfort to those who would destroy the system of political freedom that makes such investigations possible—must concentrate on the constructive, not the destructive; on the future, not the past.

They must avoid, at all costs, any more public exposure of secret intelligence methods, technology or personnel. No intelligence organization, even in a democracy, can be a completely open book if it is to be worth its cost.

But there are some key questions that require reassessment.

Are there, for instance, too many semi-independent intelligence agencies, each vying for power? Or does each have its important specialized role and does each act as check-rein on the others?

Should the director of Central Intelligence be given more power—to knock heads together, to merge, to allocate tasks? Or would this continue and expand an already dangerous centralization of power?

Intelligence and counterintelligence are twins. What, particularly, should be the relationships between the Central Intelligence Agency and Federal Bureau of Investigation, and who should do what in counterespionage and countersubversion?

It is easy to dismiss the Communist and radical and terrorist threats as bogeymen; yet the capability of Puerto Rican nationalists and radical Weathermen to bomb public places repeatedly without detection and the ability of so well-known a figure as Patty Hearst to remain hidden in an American underground speaks badly indeed for present and recent attempts of our intelligence services to combat espionage, subversion or even simple anarchy.

How does one define the thin line between freedom and license, security and repression the "right to know" and irresponsibility? The political extremists and fanatics, in pursuit of revolution, believe that the ends literally justify any means.

United States intelligence agencies can never embrace such a concept, without ultimately aiding the hidden enemy. The adoption of such a policy—the ends justifying any means—would subvert our own institutions. Yet there is a nagging problem here; a threat exists and it cannot be met by mouthing shibboleths

How should authority over our intelligence services at the top level be exercised? Intelligence is a tool of government; as such it can be turned by those who control it to good or evil purposes. Who should be the guardians of the good, who the monitors?

The more people that get into the act the less secrecy. Congress is noted for its blabber-mouth proclivities; if there is to be any secret intelligence it is clear that only a handful of Congressmen, picked for ability, judgment and discretion and devotion to the common good, can be kept fully informed.

Intelligence—facts, secrets, our own and the opposition's—means, today and for the future, security—the difference between the life and death of a nation.

Granted the need, how then do you keep intelligence apolitical, freed from the ambivalent pressures of domestic politics, in a milieu such as Washington, which is highly partisan?

And, ultimately, the larger question—the unresolved residue of Watergate—how do you curb executive power without crippling it and how do you operate a democratic government, or for that matter, any government without secrecy?

ELIMINATE THE TAX DEDUCTION FOR FIRST-CLASS AIR FARE

Mr. KENNEDY. Mr. President, last month I introduced a bill, S. 1698, to amend the Internal Revenue Code by eliminating the tax deduction for the first-class component of air travel as an ordinary and necessary business expense.

Recently, there have come to my attention two press items supporting this legislation. Mr. President, I ask unanimous consent that an editorial from the Sacramento Bee and an opinion column from the Louisville Times be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Sacramento Bee, May 15, 1975]

FLYING HIGH

Many tax benefits which the government allows as the ordinary and necessary cost of doing business are legitimate and there is no quarrel with them. Others are not—to an extent that may surprise the general taxpayer.

Critics contend the definition of "ordinary and necessary"—with a 48-cent tax subsidy for every dollar of deductible business expense—has been stretched beyond the breaking point in a number of areas.

Sen. Edward M. Kennedy says the average citizen has been a silent partner at many high-living business functions: The corporate host pays half the bill himself but sticks the taxpayer with the other half. The Massachusetts Democrat says it costs the government hundreds of millions, perhaps billions, of dollars to maintain the extravagant executive in style.

Kennedy told the Senate that whatever the complexity of other aspects of the business expense issue, the tax break allowed for first-class air travel is one of the least justifiable and that's why he was prompted to introduce legislation to eliminate it.

Based on Civil Aeronautics Board figures, the bill would bring in an additional $280 million in tax revenue this year, $342 million next year and as much as $431 million in 1978.

Nothing in the bill would prevent the executive from flying first class; the additional cost simply would be treated as a nondeductible luxury item. In a period of concern over the enormity of the federal deficit, the substantial revenues gained by the proposed tax revision would be especially welcome.

[From the Louisville Times, May 23, 1975]

BACK-SEAT FLYING—KENNEDY WOULD END JET-SET EXPENSE ABUSES

(By Bill Billiter)

Several [illegible] to the National Governors' Conference at Lake Tahoe, Nev. the couple seated behind me attracted the attention of my seatmate, a Chicago newspaperman.

"Your governor (of Kentucky) and his wife are the only gubernatorial party I've seen not flying first-class, up front," he said in wonder.

He referred to the fact that Gov. and Mrs. Wendell Ford were happily seated with hoi polloi in the less spacious, less gracious—but cheaper—section of the aircraft. Gov. Ford made no big deal about flying economy class; I don't recall his ever getting any publicity, favorable or otherwise, for such frugality.

In a $1 billion state budget, the dollar savings are miniscule. But Gov. Ford set a good standard, I believe, for other state employees who given their choice, would wing off on expense accounts to various conventions in the tonier confines of the first-class section.

Gov. Ford is now Sen. Ford and I have little doubt that he'll be supporting Sen. Edward Kennedy's newly introduced bill to crack down on those who fly first class at the expense of all federal taxpayers.

Many jet-set chislers probably don't realize that taxpayers are subsidizing their first-class travel. They are the business and professional people on expense account. The expense accounts subsequently become federal tax deductions. And you and I and every other taxpayer help foot the bill for those ritzy flights.

Sen. Kennedy's bill would allow deductions only for legitimate, business-related flights that are in the coach (or economy) class.

". . . In this time of deep recession, there is no justification for a loophole in the tax laws that requires the hard-pressed average taxpayer to subsidize the comforts of first-class airfare for traveling executives," Sen. Kennedy said.

The senator also noted that outlawing first-class flights as deductible expense items would produce a modest, but meaningful tax saving: An estimated $280 million in 1975 and up to $431 million by 1978.

Sen. Kennedy's bill in no way penalizes businesses. "It is a legitimate business decision to travel by air . . .," he said, pointing out that a businessman flying in the coach section gets to his destination at precisely the same time as the person flying first-class. Therefore, he said the coach-class fare "is all that should be allowed as a business tax deduction."

"With the marginal corporate tax rate at 48 per cent, the corporation receives a 48-cent tax subsidy for every dollar of deductible business expense," Sen. Kennedy said. "In effect, the ordinary taxpayer picks up half the tab for every business expense that qualifies as a tax deduction. Every time the waiter brings the bill at the end of a martini business-lunch or four-course dinner or evening entertainment, the corporate host pays half the bill himself, but he sticks the taxpayer with the other half."

Congress this year would be wise to tighten up the business-deduction laws to make sure that "business trips" are deductible only if "business," and not pleasure, is the chief reason for the trips. Numerous other expense-account loopholes should be closed. But a good start for this tax reform would be Sen. Kennedy's bill. If it passes, it would no longer surprise a Chicago newsman to see a governor flying economy class, back there with all the ordinary taxpayers.

MAINE LEGISLATURE ASKS THAT MEDICARE COVER COSTS OF EYEGLASSES, PRESCRIPTION DRUGS, AND HEARING AIDS

Mr. MUSKIE. Mr. President, on behalf of Senator HATHAWAY and myself, I ask unanimous consent that a joint resolution [illegible] Maine Legislature, asking Congress to include the cost of

94TH CONGRESS
1ST SESSION

H. R. 8281

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1975

Mr. BADILLO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for, and assure the independence of, a Special Prosecutor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Special Prosecutor Act of 1975".

APPOINTMENT OF SPECIAL PROSECUTOR

SEC. 2. (a) The United States District Court for the District of Columbia, sitting en banc, shall appoint a panel of three of its members, hereinafter in this Act referred to as "panel". Any vacancy on the panel shall be filled in the same manner as the original appointment.

(b) The panel is empowered to and shall promptly appoint a Special Prosecutor, who shall head an Office of Special Prosecutor, and to fill any vacancy which may occur in the position of Special Prosecutor.

(c) Participation in the selection of the panel shall not in and of itself disqualify a judge in any proceeding in which the Office of Special Prosecutor is involved. However, a judge who serves on the panel is disqualified from participating in any proceeding in which the Office of Special Prosecutor is involved.

COMPENSATION AND STAFFING

SEC. 3. (a) The Special Prosecutor shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) The Special Prosecutor may employ and fix the compensation of personnel in the Office of Special Prosecutor as he reasonably determines to be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates), but at rates not to exceed the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(c) The Special Prosecutor may procure personal serv-

ices of experts and consultants, as authorized by section 3109 of title 5, United States Code, at rates not to exceed the per diem equivalent of the rate for GS–18 of the General Schedule established by section 5332 of title 5, United States Code.

(d) Every department or agency of the Federal Government is authorized to make available to the Special Prosecutor, on a reimbursable basis, any personnel the Special Prosecutor may request. Requested personnel shall be detailed within one week after the date of the request unless the Special Prosecutor designates a later date. An individual's position and grade in his department or agency shall not be prejudiced by his being detailed to the Special Prosecutor. No person shall be detailed to the Special Prosecutor without his consent.

(e) For the purposes of subchapter III of chapter 73 of title 5, United States Code, the Special Prosecutor and the personnel of the Office of Special Prosecutor shall be deemed employees in an executive agency.

JURISDICTION AND AUTHORITY OF THE SPECIAL PROSECUTOR

SEC. 4. (a) The Special Prosecutor has exclusive jurisdiction to investigate and to prosecute in the name of the United States—

(1) all offenses or allegations of affenses arising out

of the conduct of domestic intelligence or counterintelligence activities and the operation of any other activities within the United States by the Central Intelligence Agency or any other intelligence or law enforcement agency of the Federal Government;

(2) all violations or suspected violations of any Federal statute by any intelligence or law enforcement agency of the Federal Government or by any persons by or on behalf of any intelligence or law enforcement agency of the Federal Government including but not limited to surreptitious entries, surveillance, wiretaps, or illegal opening or monitoring of the United States mail; and

(3) such related matters which he consents to have assigned to him by the Attorney General of the United States.

(b) The Special Prosecutor is authorized to take any action necessary and proper to perform his functions and carry out the purposes of this Act, including—

(1) issuing instructions to the Federal Bureau of Investigation and other domestic investigative agencies of the United States for the collection and delivery solely to the Office of Special Prosecutor of information and evidence bearing on matters within the jurisdiction of the Special Prosecutor, and for safeguarding the integ-

rity and inviolability of all files, records, documents, physical evidence, and other materials obtained or prepared by the Special Prosecutor;

(2) conducting proceedings before grand juries;

(3) framing and signing indictments;

(4) signing and filing informations;

(5) contesting the assertion of executive privilege or any other testimonial or evidentiary privilege;

(6) conducting and arguing appeals in the United States Supreme Court, notwithstanding the provisions of section 518 of title 28, United States Code;

(7) instituting, defending, and conducting civil and criminal litigation in any court; and

(8) exclusively performing the functions conferred upon the Attorney General of the United States under part V of title 18, United States Code (relating to immunity of witnesses), with respect to any matter within his exclusive jurisdiction.

DELEGATION

SEC. 5. The Special Prosecutor is authorized to delegate any of his functions to personnel of the Office of Special Prosecutor, and to experts and consultants retained pursuant to section 3 (c).

TRANSFER AND ACQUISITION OF FILES AND INFORMATION

SEC. 6. (a) All files, records, documents, and other ma-

terials in the possession or control of the Department of Justice, or any other department or agency of Government, which relate to matters within the exclusive jurisdiction of the Special Prosecutor appointed under this Act, are transferred to the Special Prosecutor as of the date on which he takes office.

(b) The Special Prosecutor is authorized to request from any department or agency of the Federal Government any additional files, records, documents, or other materials which he may deem necessary or appropriate to the conduct of his duties, functions, and responsibilities under this Act, and each department or agency shall furnish such materials to him expeditiously, unless a court of competent jurisdiction shall order otherwise.

(c) The Special Prosecutor shall keep inviolate and safeguard from unwarranted disclosure all files, records, documents, physical evidence, and other materials obtained or prepared by the Office of Special Prosecutor.

GENERAL SERVICES ADMINISTRATION

SEC. 7. The Administrator of General Services shall furnish the Special Prosecutor with such offices, equipment, supplies, and services as are authorized to be furnished to any agency or instrumentality of the United States.

SPECIAL PROSECUTOR'S TERM OF OFFICE

SEC. 8. (a) The Office of Special Prosecutor shall terminate

nate three years after the date the panel first appoints a Special Prosecutor.

(b) Notwithstanding the provisions of subsection (a), the Office of Special Prosecutor is authorized to carry to conclusion litigation pending on the date such office would otherwise expire.

REPORTS

SEC. 9. The Special Prosecutor shall make as full and complete a report of the activities of his office as is appropriate to the panel, to the Attorney General of the United States, and to the Congress, on the first and second anniversaries of his taking office and not later than thirty days after the termination of the Office of Special Prosecutor.

REMOVAL OF SPECIAL PROSECUTOR

SEC. 10. The panel has the sole and exclusive power to remove the Special Prosecutor. The only grounds for removal are gross dereliction of duty, gross impropriety, or physical or mental inability to discharge the powers and duties of his office.

EXPEDITED REVIEW PROCEDURE

SEC. 11. (a) The sole and exclusive procedure for the review of the validity of any provision of this Act shall be as follows:

(1) Any defendant who challenges the validity of this Act in a criminal case or proceeding shall file a mo-

tion to discuss not later than fifteen days after service of the indictment or information. Such motion shall be heard and determined by a district court of three judges, convened pursuant to section 2284 of title 28, United States Code, as soon as possible but in no case later than twenty days after the filing of the motion.

(2) Any person who challenges the validity of this Act in connection with a civil action or proceeding shall do so by motion filed with the appropriate United States district court. The district court shall immediately certify such motion to be heard and determined by a district court of three judges convened pursuant to section 2284 of title 28, United States Code, as soon as possible but in no case later than twenty days after the filing of the motion.

(3) Not later than fifteen days after the determination of the district court of three judges under paragraph (1) or (2) of this section, any party may file an appeal from that determination in the United States Supreme Court. The Supreme Court shall expedite to the greatest extent possible its decision on such appeal.

(b) The expedited review procedure of this section shall not apply to any challenge to the validity of any provision of this Act insofar as any question presented shall have been previously determined by the Supreme Court notwithstand-

ing that the previous determination occurred in litigation involving other parties.

FUNDING

SEC. 12. There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act, and, notwithstanding any other provision of law, the Special Prosecutor shall submit directly to the Congress requests for such funds as he considers necessary to carry out his responsibilities under this Act.

SEVERABILITY

SEC. 13. If the provisions of any part of this Act, or the application thereof to any person or circumstances, are held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

94TH CONGRESS
1ST SESSION

H. R. 8281

A BILL

To provide for, and assure the independence of, a Special Prosecutor, and for other purposes.

By Mr. BADILLO

JUNE 26, 1975
Referred to the Committee on the Judiciary

Approved For Release 2005/12/14 : CIA-RDP77M00144R001100190012-0