that Mr. Bennett hadn't been able to find work and Mrs. Bennett felt it wasn't her role to work. She thought it would only hurt him more if she found work when he couldn't so she didn't try. She told me on several occasions she was willing to take the welfare amount until he found something. He'd get steady work, no matter what it paid, and they'd be able to straighten their lives out.

"But I was becoming aware of their problems. All the talk about moving to where it was better was part of the lie they kept with one another and everyone they met. So I accepted it.

"Mrs. Bennett, she came up to our place every once in a while. Never stayed if anybody else was home. I'll never forget that woman's face as long as I live. She couldn't have been more than early thirties, maybe younger. But she looked like she was in her mid-forties.

"She had these terrible lines around her eyes like I've never seen before on anyone. This terrible purple, blue color around her eyes too, like she was an actress with makeup on. Her teeth were bad, like she never brushed them, and her hair always seemed so dirty. But the thing I remember the most was the way her eyes looked like they had been cried out. Like she had no more tears to cry. That's where you could see she was finished—in her eyes. Mr. Bennett, who I don't remember nearly so well, he looked the same way. Ed called them the couple with the workless eyes.

"There were only a few conversations, nothing too much, but she told me how she fought with her husband and refused to sleep with him in the same bed. She said she knew it wasn't a good idea, but she had her principles.

"I told her it was none of my business, but since the job market was so terrible, it didn't make much sense for her to be tough on her husband. She said she knew that, but she had her pride. She said she couldn't go home to see her mother because her mother wouldn't talk with her because Mr. Bennett didn't have a job. She didn't even bother to telephone her mother. She'd tell her husband he was the reason she couldn't have a relationship with her own mother.

"That's how it went with Mrs. Bennett. I'd be ready to bawl her out and she'd come to me and tell me her side of the story. I couldn't do anything because she was trying to tell me she had pride and a sense of shame about it.

"That's the part that was so strange. Mrs. Bennett believed she was doing a great thing just by the fact that she stayed with her husband and children. That was her act of courage, if you could call it that, and I think you could. I think you could say she was a courageous woman.

"The Bennetts, they knew by the time they moved into this building they were dying. When she said to me that first day, 'We're only going to be here a little while.' I knew what she was saying. She was telling the world, 'I'll be here 'til I die.' It was the end of the line and she knew it.

"So you think, now, because you can always look back, if a job, not even the greatest job in the world had come up, these people might have been spared all they had fall on them. No one needed to give them advice or tell them about other families going through the same thing they were going through. They needed some company to come to them and say, 'Here, Mr. Bennett, here's a job. You need a job, we'll give you this one.'

"One job and they would have had a little smooth sailing, a little more time. But there was no way I could give her time."

Francie Zegler was not the first person to be awakened by the commotion that cold February night. Ed woke first, certain their apartment was being robbed. Listening more intently, he realized the noise was coming, as usual, from the Bennetts.

But it wasn't fighting, or furniture being thrown, this time. There had been an explosion. He roused his wife and told her what he thought he had heard. Francie told him he was dreaming.

No, he protested. He had heard an explosion which sounded like a gun firing. Then, as she was about to speak, they heard a gunshot and saw lights going on in apartments across the small courtyard.

Edward and Francie knocked on the Bennetts' door for more than a full minute before they tried opening it. The door was unlocked. The living room lights were on and a strange smell hung in the air, as if someone had left burnt food in the kitchen.

Ed ordered Francie to go upstairs and phone the police. Alone, he tiptoed into the kitchen where he found Stacey Bennett seated in a chair, her head lying face down on the white Formica table. There was blood on the table and the floor. She was wearing a blue bathrobe and was barefoot. And she was dead.

He ran from the room, left the Bennetts' front door open, raced up the one flight of stairs to his own apartment, locked himself inside and leaned against the door, as if he were preventing anyone from entering.

A few minutes later the police arrived to find the body of Peter Bennett lying on his bed. He had shot himself in the head. Unbelievably, the baby, Margaret Ann, and her sister, Marie, had slept through the noise.

Now, several years later, Ed Zegler cannot decide whether he remembers a great deal or a little about that one night. At times, he can replay the events in his mind without skipping a single detail; at other times he cannot make himself recall anything, not even the sight of Stacy Bennett dead in the kitchen.

One fact, however, he always remembers. A policeman asked him whether he knew Mr. Bennett. Ed said he did. Then the policeman, his eyes focused on a little notebook, asked, "Have you any idea what he did for a living?"

SECRECY AND DISCLOSURE SUBCOMMITTEE HEARINGS

Mr. BIDEN. Mr. President, next week the Subcommittee on Secrecy and Disclosure of the Senate Select Committee on Intelligence will conduct hearings on the use of classified information in litigation. These hearings will pertain to a matter of vital interest to those of us who have been engaged in congressional oversight of the intelligence community. We have learned through our study of the administration of the espionage laws that secrecy surrounding the use of classified information has hindered both the investigation and prosecution of crimes related to the national security. We have learned that fear over disclosure of classified information during criminal trials has been a significant factor in leak investigation; investigations of classical espionage, that is the covert passage of secrets to foreign powers; and even in some bribery, narcotics, and even in at least one murder investigation.

In some of these cases apparently defense counsel aware of the reluctance of the intelligence community to proceed in cases where disclosure is possible, exploit the sensitivity and in effect thwart the administration of justice. One intelligence community memorandum described this process as "gray mail."

A recent editorial in the New York Times pointed out that Attorney General Bell faced a similar problem as he engaged in plea bargaining with former Director of Central Intelligence Richard Helms in the case of his alleged perjury before a congressional committee. The Times editorial warned that if some effort was not made to develop procedures for the use of classified information in criminal trials, the defendants in cases requiring the use of national security information might engage in a form of "blackmail" which courts might find "legitimate."

The overriding concern of the Secrecy and Disclosure Subcommittee, which I chair, is that a failure to resolve this dilemma on the use of intelligence information in criminal prosecutions, might seriously undercut the committee's effort to develop statutory charters and restrictions on the intelligence community. To be more precise, if we attach criminal sanctions to some of the restrictions for foreign intelligence activities proposed in the charter, a failure to resolve this dilemma would raise the possibility that any intelligence official charged with a violation of the prohibition might be able to use intelligence information to avoid or limit prosecution.

In the hearings next week we intend to address this problem and explore possible solutions with officials of the executive branch, both the intelligence community and the Department of Justice; Federal judges; former prosecutors and defense counsel; and law professors and representatives of various public interest groups who have expressed concern about this problem.

The first day of hearings is set for March 1 at 10 a.m. in room 457 in the Russell Building, at which time we will hear from Admiral Turner, Director of Central Intelligence, Deputy Attorney General Benjamin Civiletti, and Philip Lacorva, formerly of the Watergate Special Prosecutor's Office. On March 2 at 10 a.m. in room 318 in the Russell Senate Office Building, we will hear from Federal Judge Frank Kaufman of Baltimore, who handled a serious espionage case where many of these issues arose, and the Chief Judge of the Court of Military Appeals, which has handled a number of espionage cases involving military personnel. And finally, on March 6 at 10 a.m. in room 1318, Dirksen Senate Office Building, we will hear from former Director of Central Intelligence William Colby, former CIA General Counsel Lawrence Huston, Prof. Charles Nesson of Harvard Law School, and finally Morton Halperin who will represent the American Civil Liberties Union and the Center for National Security Studies.

Finally I would like to ask unanimous consent that a speech which I delivered at Bowdoin College in Maine last November on this subject be printed in the RECORD in order that Members of the Senate have a better understanding of the precise issues which are likely to arise in these hearings.

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

THE PRICE OF SECRECY

(Address by the Honorable Joseph R. Biden, Jr., at Bowdoin College, Brunswick, Maine)

I would like to share with you today a dilemma which I face almost every day as a United States Senator, especially as a member of the Senate's Select Committee on Intelligence, and as a member of the Foreign Relations Committee. This dilemma, indeed I would call it a puzzle, results from the existence within our democracy of a body of information which we call national secrets, and organizations within our government which operate almost totally in secret, the intelligence community.

Perhaps I can best explain that dilemma by summarizing my reactions to the briefings I received as a member of the Committee. I cannot and will not discuss with you the details of what was disclosed in those briefings, but I can tell you my reactions.

I came to the Committee with a certain skepticism about intelligence activities, a healthy skepticism which I still have. However, after the first few briefings it became clear to me that there were indeed activities of the intelligence community that were in the national interest and that by their very nature had to remain secret. Without going into actual espionage operations which I would obviously be banned from discussing publicly, allow me to give you a few hypothetical examples of the kinds of operations which I feel deserve secrecy.

There are forms of technological spying of which I am sure you have read in the newspaper. These operations are critical to our efforts to achieve an international understanding with respect to disarmament. Without the capability to verify and monitor compliance, a SALT agreement would be impossible. Furthermore, the technological monitoring and spying systems must be kept secret because their effectiveness can be so easily frustrated by a government attempting to avoid compliance with any such agreement.

I have also not found it difficult to defend absolute secrecy with respect to CIA covert operations directed against terrorism and narcotics. We expect the CIA to attempt to recruit spies within the various terrorist groups that have been hijacking airliners and murdering both crew and passengers, and to penetrate the major drug trafficking rings around the world in order to frustrate the flow of hard drugs into the United States. If we expect the CIA to do these things then it must be able to offer to those spies who are obviously risking their lives the promise of complete confidentiality. Similarly, take the not uncommon hypothetical case of an American military officer who has been approached by the Soviets to engage in espionage but instead reports the approach to the FBI and is willing to cooperate in an FBI effort to catch the Soviet spies. He is also entitled to a pledge of absolute confidentiality.

Having conceded the need for this secrecy and indeed secrecy in other areas which I have not even mentioned pertaining to intelligence, I found myself faced with a terrible dilemma. I was immediately reminded of those basic principles of democracy which we all learned in high school civics, that the basic foundation of democracy is consent of the governed, and that the essence of consent is trust and candor from those who govern.

I remembered reading Alexis de Tocqueville's "Democracy in America" written in the late 18th century in which he described with enthusiasm the American democracy as the most vibrant in the world and the hope of mankind. However, I will never forget a passage in "Democracy in America" in which he warned about the tendency of our government to centralize power and increase secrecy and he pictured a centralized power in our government which:

"Does not tyrannize but . . . compresses, enervates, extinguishes and stupifies the people, until each nation is reduced to nothing better than a flock of timid and industrious animals of which the government is the shepherd."

I remembered studying the writing of other political scientists who argued that de Tocqueville's, Rousseau's, and Aristotle's concept of democracy are no longer feasible, and that the only feasible alternative was a form of "democratic elitism". For the first time in my political life I am prepared to buy that argument.

However, the question I keep asking myself is am I becoming one of those "shepherds" of a "flock of timid and industrious" citizens blinded by secrecy. I seem prepared to keep from my fellow citizens information which was imparted to me as a part of that "elite". That is the dilemma—how can we have secrecy in a democracy based on the principle of consent of the governed?

I have just finished an excellent book on this subject by David Wise entitled "The Politics of Lying," which provides greater focus to my concerns about the competition between secrecy and democracy. I was particularly struck by a newspaper article which Mr. Wise summarizes at the beginning of the conclusion to his book.

According to this article, published in June of 1970, a survey conducted by the Knight Newspapers of 1700 individuals in 6 American cities, indicated that a substantial number of Americans do not believe that their government landed a man on the moon. In Macon, Georgia 19 percent of those interviewed doubted the moon landing; in Charlotte, North Carolina 17 percent and Philadelphia 9 percent, Miami 5 percent, Akron 4 percent and Detroit 2 percent. When asked why they believed the government would play such a hoax upon them, many responded that they believed that their government had done it to fool the Russians and the Chinese, or that it had been done to justify the great cost of the space program.

This survey was conducted in 1970, two years before the Watergate break-in; four years before the resignation of Richard Nixon. Surely a survey taken in 1975, 1976 or 1977 would indicate an even greater distrust among people in their government. Indeed, Jimmy Carter ran on a platform of restoring credibility in the office of the Presidency and in the government generally.

Surely at the heart of this basic distrust is the legacy of deceit and secrecy which has characterized our government's activities in the national security sphere over the last decade. Although some of the secrecy was legitimate, most of the secrecy and almost all of the lying was borne of a certain contempt by the government that the average American could not understand affairs of state. Presidents, Secretaries of State, Defense and the CIA deceiving the Congress and the American people about the U–2 incident, Vietnam, Cambodia, covert actions in Chile, and numerous other countries around the world have created a conventional wisdom even among educated people in this country that the government does not tell the truth and rarely, if ever, tells all.

As a member of the Intelligence Committee of the Senate I am part of a new solution to this problem of deceit in the name of national security, a new effort to accommodate secrecy with democracy. This solution is called Congressional oversight of the intelligence community.

In effect Congress has struck a deal with the Executive branch. In 1976 the Senate said we in the Congress must and will oversee on behalf of the American people the activities of the intelligence community no matter how sensitive, no matter how vital to the national security. But in return we promise to keep your secrets no matter how outrageous they might be. Granted we did reserve a limited power to unilaterally declassify secrets provided us, but that procedure has rarely been used.

This arrangement is a form of "democratic elitism" because those of us on the Committee are not only reviewing secret information on your behalf but on behalf of other members of the Senate as well. The Committee was deliberately constituted to reflect in its membership the political positions and philosophy of all the members of the Senate, and therefore the Committee contains a full spectrum of political views. Furthermore, it has representatives of the four major committees which are concerned about intelligence operations—Foreign Relations, Armed Services, Appropriations, and Judiciary. But make no mistake about it, the Committee is deliberately designed to be a substitute for those committees and the other members of the Senate and except in unusual circumstances we do not share what we find with the rest of the Senate. It is an imperfect arrangement but it is the best we can devise for the moment, and therefore I endorse it.

I would like to now summarize for you very briefly the activities and agenda of our Committee, and then discuss with you an incident that occurred just last week which could, if misinterpreted, threaten the continuation of this very delicate arrangement.

Under the leadership of its first Chairman, Daniel Inouye of Hawaii, the Intelligence Committee has established oversight procedures for the whole intelligence community. We are routinely informed of many delicate and sensitive intelligence operations, similar to the types of operations I described earlier. We are also required by statute to be informed of all so-called covert actions, efforts by our government to do more than simply collect intelligence, but to actually influence events. We must also be informed of any information pertaining to improprieties and illegalities engaged in by officers and agents of the intelligence community. Procedures are also being established for review of sensitive electronic surveillance and other intrusive investigative techniques directed at American citizens.

Each year the Committee, through its Budget Subcommittee, carefully reviews the budgets of each of these agencies. Last year for the first time in history the Congress actually reviewed, through this Subcommittee, the exact amounts expended by each intelligence agency for each intelligence operation. This oversight project consumed 20 legislative days and involved the interview of over 300 intelligence agency officials and review of thousands of intelligence documents. This review has already had some impact on intelligence operations. The power of the purse has become a powerful weapon in oversight.

The Committee has authority to and has actually conducted a number of extensive interviews into allegations of improprieties by the intelligence community. We have actually reviewed in great detail thousands of documents, in particular espionage operations awry. For example, this last year the Committee issued a report on spying operations in Micronesia and held public hearings on new information about CIA drug testing and behavior modification projects. The Committee has established a special Subcommittee for the purpose of reviewing allegations of impropriety and has hired its own team of special investigators.

I chair a Subcommittee on Secrecy and Disclosure. We have been focusing on the problem of leaks of classified information and what sanctions should or should not apply to the unauthorized disclosure of intelligence

information. We have also attempted to develop more precise definitions of what not only the Executive branch but our Committee should be required to make public on the one hand, and required to keep secret on the other.

Finally, perhaps most important, the Committe has devoted a large amount of its energy to developing statutory charters which will establish in permanent legislation the do's and dont's for the intelligence community. The legislation will create clear authority where it is ambiguous and precise prohibitions where they do not now exist.

Ultimately the explicit prohibitions in this comprehensive charter will be enforced by both criminal sanctions and the authority of private citizens who are victims of violations of the charter to sue the government for damages. Furthermore, all of the provisions of the legislation will be enforced by regular oversight by our Committee and a similar committee in the House of Representatives.

The solution then that seems to be emerging to the dilemma of secrecy in a democracy is a mix of checks and balances, a mix of legislative prohibitions enforced by Congressional oversight and judicial sanctions. A basic premise of that system is that although the intelligence community cannot be held publicly accountable in the press, it can be held accountable before the secret processes of our Committee and in extreme cases before the courts in the violation of explicit statutory prohibitions to be developed by that same committee.

Two weeks ago the Attorney General of the United States entered into an agreement with the former Director of the Central Intelligence Agency, Richard Helms, which has the potential of disrupting this whole delicate arrangement. On November 1, Richard Helms pleaded nolo contendere to a charge of lying to a Congressional committee. In exchange for that plea, Attorney General Bell promised not to seek a prison term for Mr. Helms. That sequence could set the precedent for making intelligence officials immune to accountability by not only Congressional committees, but by the judicial branch as well.

For the purposes of our discussion tonight, permit me to review with you the basic facts of the Helms case. In February of 1973, Richard Helms, who was then a nominee to be Ambassador to Iran, appeared before the Foreign Relations Committee, a committee of the Congress which at the time had responsibility for oversight of the CIA. During that hearing he was asked questions about the Agency's involvement in attempting to prevent Salvador Allende from becoming President of Chile. Despite the fact that Helms was completely knowledgeable about CIA's efforts to prevent the Allende election, he deliberately deceived the Committee by denying any Agency involvement. He did not simply state that he should answer in executive session or even tactfully avoid answering the question. He deliberately deceived the Committee.

Similarly, in March of 1973, he appeared again before the same Committee in connection with its inquiry into allegations that the CIA and the International Telephone and Telegraph Corporation had attempted to influence the presidential election in Chile in 1970. Again, he deceived the Committee by denying any Agency involvement.

All of my information on this case is based entirely on newsclips in that the Committee has generally taken the position that it will not question the Attorney General on an ongoing criminal case and we have not had the opportunity to discuss this matter with the Attorney General.

Apparently within a year of the incident in the Spring of 1973, the Department of Justice began to investigate the possible perjury by Helms. According to a news story which appeared in the Wilmington News Journal in February of this year, then Attorney General Saxbe entered into an agreement with Edward Bennett Williams, Helms' attorney, not to proceed with the prosecution. According to the News article, "Helms might feel compelled to discuss the role of Kissinger, ITT, Nixon and others in Chile. And that is why Justice backed off." However, when Edward Levi became Attorney General he decided to pursue the investigation and although he had problems obtaining relevant sensitive documents from the intelligence agency, on January 14 of this year Helms was formally notified that he was the target of a federal grand jury investigation.

Soon thereafter newspaper articles began to appear quoting prominent officials inside and outside the government stating their fear that this prosecution might have severe damaging consequences on our U.S. intelligence activities. One article stated that the case was "fraught with political and national security landmines". Another stated that Helms had been quoted as saying that if he were indicted he would "bring down" with him former Secretary of State Henry A. Kissinger. An Evans and Novak column appearing on August 18 was quite explicit:

"So dangerous to this country are the implications of the unprecedented grand jury investigation of Helms on suspicion of perjury that Carter has been secretly warned by informal advisors he must never let the case go to trial. One prominent Democrat, deeply involved in high intelligence matters for many years has said privately that Helms' indictment and trial "would be the single-most damaging thing that could be done to this country."

I was not very surprised when I read in the newspaper on November 1 that the Department of Justice had determined to dispose of the matter by means of a nolo contendere plea to a misdemeanor. This is a process frequently used and much criticized in big corporate anti-trust cases, whereby the defendant need not undergo the embarrassment of a guilty plea or a public trial but agrees not to contest the government's charge which has been usually reduced to a minor offense. In its statement to the Judge, the Justice Department attorney stated that he thought the case was fair because "the trial of this case would involve tremendous cost to the United States and might jeopardize national secrets."

So here we have a former ranking official of the intelligence community agreeing not to contest an allegation that he deliberately deceived Congressional committees which had legitimate responsibilities to oversee his operations. The Attorney General says that for reasons of national security, because a trial could jeopardize national security information, the man could not be prosecuted for the crime and should instead be penalized a $100 fine. As you are probably aware, the judge disagreed with the Justice Department and fined Helms $2,000.

At this point I must hasten to add that I am not one who has argued for the "drawing and quartering" of Richard Helms. If I were a judge sitting on this case I would probably not issue a very harsh sentence to Mr. Helms because I believe Helms honestly believed he was under a conflicting obligation to maintain national secrets, even in the face of a Congressional committee. Furthermore, this was at a time when the public was still quite willing to give the CIA the benefit of the doubt.

I am, however, deeply disturbed with the possible precedent that this case may set, and especially the process by which this decision was made. First, on its surface the case presents an obvious threat to the delicate oversight and charter arrangements that I have described above. It could easily be [illegible] arrangements to stand for the proposition that a member of the intelligence community could still come before our special intelligence oversight committee and lie to our committee about activities which were in obvious violation of any arrangement we had established, or indeed any charter that had been written by the Committee. He would, if the Justice Department position prevails in these cases, be subject to a minimal $100 fine for each time he lied. Indeed, in Helms' case, the Justice Department seems prepared to allow him to keep his government pension.

Furthermore, criminal actions attached to the more obvious prohibitions of any charter that we would enact would appear to be unenforceable in the fact of this decision. Any official of the intelligence community could simply take the position that there was very sensitive national security information necessary to prove the case against him, he would insist upon its disclosure, the government not wanting to jeopardize the information would drop the case.

In a recent editorial, the New York Times characterized this as a form of blackmail by intelligence officials which a court might find "legitimate". In effect, intelligence officials caught violating any law, be it a charter applying to their agency or any criminal statute, even espionage, have a powerful tool to immunize themselves, the threat that prosecution would reveal classified information and "legitimately blackmail" both the court or any Congressional oversight committee.

The thought that classified information might be used by a criminal defendant in a form of "legitimate blackmail" is obviously very disturbing. However, I have learned as a member of the Intelligence Committee that the New York Times was not exaggerating when it stated that a court might be willing to recognize this type of pressure upon the Attorney General as legitimate.

As Chairman, of the Intelligence Committee's Subcommittee on Secrecy, I have been engaged in a year long study of actual espionage cases, cases where the espionage statute has not been enforced in the fact of a serious breach of our secrecy regulations. I have engaged in this study primarily because the intelligence community has been clamoring in recent years for a revision of that statute and I wanted to have a better understanding of how the existing statutes operated. In the course of conducting that study I have come across abundant evidence that this form of "legitimate blackmail" has taken place in an astonishing number of cases.

As a background to understanding how this process might be legitimatized, even in the most heinous of crimes such as espionage, it is necessary to understand another basic dilemma which the courts and Justice Department must face in the national security area.

It is a basic premise of our criminal justice system that when a defendant is charged with a crime he is entitled to have all the information in the government's possession which might be used to exonerate him or might be used in his defense. Obviously when a defendant is charged with a crime related to the national security it is not only probable but likely that the evidence necessary for his defense or indeed the evidence necessary to prove the crime will be classified information.

Every time there is a criminal prosecution or indeed even an investigation of a crime relating to the national security, the prosecutors and the court face the dilemma of determining whether or not to risk compromise of sensitive national security information necessary for conviction or to provide constitutionally required information to the defendant for his own defense.

What I have learned in my study, and I cannot describe this in great detail at the present because the study is only half finished, is that this dilemma becomes an impasse. In many espionage cases the FBI will not even begin the investigation and the Justice Department rarely prosecutes because investigation or prosecution is fruitless. The intelligence community has determined that to provide and disclose the information first to the FBI or the Justice Department and ultimately to the defendant or the court will jeopardize national security. There are cases, of great notoriety such as the Rosenburg case, where the government takes the risk and proceeds. But in every case, including the Rosenburg case, this risk must be taken.

What seems to happen in these cases is that the defendant who has engaged in the most heinous form of espionage, who has taken the most sensitive of information, has the greatest likelihood of enjoying immunity from prosecution. Because the more sensitive the information involved in the criminal case the more likely it is that the Department of Justice cannot prosecute the case.

The Secrecy Subcommittee which I chair will be holding hearings on this problem next month. Until we are finished with our work I hesitate to discuss the cases we have examined in any great detail. But I can cite two cases, other than the Helms case, which illustrate this phenomenon, two cases which have already been discussed publicly.

One case was discussed in great detail in hearings held before the House Government Operations Committee in 1976. In the course of those hearings representatives of the Department of Justice and the CIA discussed the 1974 dismissal by the Department of Justice of an indictment against CIA operative on national security grounds. The operative had been indicted in 1973 for participating in the illegal importation of 25 kilos of raw opium into the United States. Originally the CIA operative had decided to cooperate as a government witness in the case but subsequently he changed his mind. The Justice Department issued another indictment naming him as a defendant and had him arrested. During that period the operative publicly claimed that part of his defense would be that the CIA knew about his opium smuggling.

Although there was a great deal of controversy in the course of the hearings, it was clear that the CIA had suddenly become reluctant to provide necessary documents to the Justice Department to rebut any claims that the defendant would make in terms of CIA knowledge of the operation. Indeed, there was a similar problem with CIA cooperation with classified documents in the Helms case. Regardless, the CIA's reluctance to proceed with this drug prosecution apparently was a significant factor in the Justice Department's decision in 1974 that it was fruitless to proceed with a prosecution.

Certainly a more infamous example of this process of national security claims frustrating criminal investigations or prosecution is the Watergate case itself. If you will recall, within about a week of the Watergate break-in the FBI discovered evidence linking the actual burglars to an individual named Kenneth Dahlberg and another individual named Manuel Ogarrio in Mexico City. This was a critical link that eventually traced the burglars to money in the Nixon reelection campaign and eventually to the White House.

If you will review the House Impeachment Committee statements you will find that as soon as the White House discovered that the Bureau had uncovered this connection, the President directed Haldeman to meet with CIA Director Helms, Deputy Director Vernon Walters and John Ehrlichman to ascertain whether there was any CIA involvement in the Watergate affair. Then, according to the actual statement of information in the House Judiciary Committee's report:

"The President directed Haldeman to ask Walters to meet with Gray to express these concerns and to coordinate with the FBI, so that the FBI's investigation would not be expanded into unrelated matters that would lead to disclosure of the early activities of the Watergate principals."

Despite the fact that Helms assured Haldeman and Ehrlichman that there was no CIA involvement in Watergate, he directed his Deputy to meet with the FBI Director, and to remind them of an agreement that the FBI and the CIA had that if they appeared to be running into each others sensitive operations, that they would notify each other and back away.

For about a week the FBI did not proceed with this investigation because it was under the impression that it had indeed stumbled across a CIA operation and for national security reasons felt that any further investigation would jeopardize sensitive information and operations. So here again the claim of national security and the threat of jeopardizing secrets undermined the administration of justice.

So without even going into the espionage cases we are examining in the Secrecy Subcommittee study, we can discuss three very serious crimes in which the investigation and prosecution were frustrated because they touched national security. One involved deceit of a Congressional committee, the other importation of heroin, and the final the notorious Watergate case itself.

I submit that in all three cases it appears the Department of Justice was pressured, if not coerced, by claims of national security to back away from very important criminal investigations or prosecutions. This is a process which we cannot permit to continue. It not only threatens the very delicate oversight apparatus and charters agenda that we are establishing for the intelligence community, but as exemplified in the drug case and the Watergate example I have suggested, threatens to undermine the equitable administration of justice by our government.

So what can we do about this very difficult, indeed apparently intractable problem? I can propose no simple solutions. Indeed, just as our compromise on Congressional oversight is imperfect I am sure that any proposal that we pursue in the Congress in this regard will not be totally satisfactory. This matter will be high on the agenda of the Secrecy Subcommittee and for the Intelligence Committee generally.

One idea which I have heard discussed, indeed it was even suggested by the recent New York Times editorial, is so-called in camera procedures. This derives from the famous case of *Nixon* vs. *Sirica* in the U.S. Court of Appeals for the District of Columbia. In that case former President Nixon essentially made the same claim—that national security would be jeopardized if documents in his possession were used in the investigation and prosecution of individuals in the Watergate conspiracy. The court forced the President of the United States to turn over the documents deemed to be privileged to a federal judge for his in camera or private inspection. Perhaps a similar procedure could be developed for the review of such documents in criminal cases such as the Helms case, the drug case and the Watergate case I described above, as well as the espionage cases that we have been examining in the Secrecy Subcommittee.

Such a procedure would not be without controversy. Many civil libertarians believe that these so-called secret or in camera federal judicial procedures are unconstitutional. They contend that a defendant in a criminal case has a right to a public trial and that any in camera or secret procedure that excludes the defendant, his counsel or indeed even the public infringes upon that constitutional right.

I don't know where I come out on this problem yet and I intend to put a lot more thought to it because I think the issues that it raises are fundamental. Hopefully the hearings planned for next month will shed more light on this problem. However, I am confident that if we cannot fashion an acceptable solution to this impasse I believe that our democracy is in grave trouble.

Secrecy will have become a real cancer devouring our government. It will not only create an impasse in the administration of justice, paralyzing the Department of Justice, but it will ultimately destroy whatever little credibility we have been able to restore in our government in recent months.

In short, if we cannot develop procedures which can accommodate necessary secrecy with fundamental democratic principles, the outrageous results of that Knight Newspaper study about the moon landings will pale in comparison to the cynicism which we will see in the average American citizen. Ironically in the name of preserving secrets which are indeed necessary to the national security which protects our democracy, we will have destroyed that very democracy itself.

In conclusion I am reminded of the infamous statement of a U.S. military officer defending the bombing of a South Vietnamese village, "We had to destroy it in order to save it."

THE REALITY OF SOLAR POWER

Mr. McGOVERN. Mr. President, the issue of energy and energy costs has occupied a great deal of the Senate's time in the past months. We have been discussing in different ways which energy technologies should get the most Federal support. I believe that we should put more of our resources into encouraging and supporting the use of solar energy and other renewable energy technologies.

I would like to bring to the attention of the Senate a very interesting article, "You Can't Hold Back the Dawn: The Reality of Solar Power" by Bruce L. Welch, president of the Environmental Biomedicine Research Institute. It was published in the January 21, 1978, issue of the Nation. I think that we should all pay close attention to Dr. Welch's case for greatly increasing Federal funding for solar energy.

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

THE REALITY OF SOLAR POWER

(By Bruce L. Welch)

(It is no longer resources that limit decisions. It is the decision that makes the resources. That is the fundamental revolutionary change—perhaps the most revolutionary that mankind has ever known.—U Thant.)

There is no shortage of energy, only a shortage of initiative for making energy accessible in usable form. We are still in a position to choose our future energy sources and, hence, to shape other important characteristics of society that depend upon them. The process of making that choice and the forces that shape it are of major public concern.

Fortunately, ours is a government of contradictions, of checks and balances, so complex that it can harbor, even nurture, the