The original documents are located in Box 17, folder "National Security" of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

DRAFT

Honorable Melvin Price, Chairman
Committee on Armed Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for our comments on H.R. 12006, a bill which would amend the National Security Act of 1947 to provide criminal sanctions for unauthorized disclosure of information relating to intelligence sources and methods. The President proposed this legislation in his message of 18 February. It was initiated several years ago by this Agency and has been extensively reviewed within the Executive branch. We strongly urge that your Committee favorably consider this measure.

Over the years, serious damage to our foreign intelligence effort has resulted from the unauthorized disclosure of information related to intelligence sources and methods. In most cases, the sources of these leaks have been individuals who acquired access to sensitive information by virtue of a special relationship of trust with the United States Government. Current law, in our opinion, does not adequately cover situations where a deliberate breach of this relationship of trust occurs. In most instances, the Government must prove an intent to harm the United States or aid a foreign power. The evidence required to establish this element of the offense may require the revelation of additional sensitive information in open court or, at the very least, the further dissemination and confirmation of the information which is the subject of the prosecution. The Government is usually unwilling to incur the additional damage which would result from such further disclosures, and as a result, the deterrent aspect of existing legislation is undermined significantly.

Presently, Section 102(d)(3) of the National Security Act of 1947, as amended, places a responsibility on the Director of Central Intelligence to protect intelligence sources and methods. However, no legal sanctions are provided for him to implement this responsibility. The legislation proposed in this bill would close this gap to the limited degree necessary to carry out a foreign intelligence program, but at the same time give full recognition to our American standards of freedom of information and protection of individual rights.

The proposed legislation recognizes the authority of the Director of Central Intelligence, and the heads of other agencies expressly authorized by law or by the President to engage in foreign intelligence activities for the United States, to designate certain information as relating to intelligence sources and methods and provides a criminal penalty for the disclosure of such information to unauthorized persons.

The proposed legislation is limited to individuals entrusted with the sensitive information described in the legislation or who gain access to it by virtue of their position as officer, employee, contractor, or other special relationship within the United States Government.

In order to provide adequate safeguards to an accused, to prevent damaging disclosures during the course of prosecution, and to prevent prosecution with respect to information unreasonably classified and designated, the legislation provides that it is a bar to prosecution if prior to the return of the indictment or the filing of the information the Attorney General and the Director of Central Intelligence do not certify that the information was lawfully classified and lawfully designated. This determination is subject to in camera review by the courts. Additionally, it is a bar to prosecution if: (a) there did not exist a procedure whereby the defendant could have had the information reviewed for possible declassification; (b) the information had been placed in the public domain by the Government; and (c) the information was not lawfully classified and not lawfully designated at the time of the offense. It is also a defense if the information was provided to any committee of Congress pursuant to lawful demand. The legislation also provides for injunctive relief in those instances where any person is about to engage in any acts or practices which would constitute a violation of the new subsection.

This Agency and the Department of Justice are presently discussing certain possible minor refinements in the proposed bill. I feel strongly that this legislation is necessary to ensure the continued effective performance of our intelligence agencies. While we will not oppose minor changes to perfect language or effect technical improvements, we do not believe the bill should be modified in a manner that could change substantively what we feel are its essential features.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

George Bush
Director

Nat'l Security Act of 1947, Amended

December 12, 1975

MEMORANDUM FOR: MAX L. FRIEDERSDORF

THRU: VERN LOEN

FROM: CHARLES LEPPERT, JR.

SUBJECT: S. 2350, Secretary of Treasury as a member of the National Security Council

I checked with Rep. Bob Wilson and Frank Slatinshek on the above legislation. Slatinshek gave me the following status report.

S. 2350 was introduced by Senator Symington as the principal sponsor. The bill was reported in the Senate on October 8, 1975, and passed the Senate on October 9. In the House the bill was referred to the House Armed Services Committee on October 20 and favorably reported by a voice vote on December 9.

The bill's principal proponent is Senator Symington (D-Mo.) Rep. Mel Price was the primary force behind the bill in the House at the request of Senator Symington. The purpose of the bill is to provide that the Secretary of the Treasury shall sit as a member of the National Security Council.

The basis for the legislation is in a recommendation of the Murphy Commission which recommended that the Secretary of Treasury sit as a member of the NSC because of the economic considerations and implications in foreign policy decisions. There were no strong feelings about the legislation in the House Armed Services Committee and Rep. Bob Wilson reported that Secretary Simon was in support of the bill.

Slatinshek says the legislation is purely cosmetic and there is no need to do battle over the bill as it is not that important. He also says that if the President doesn't like the bill and vetoes it that the matter would probably die.

The memorandum from Marsh to you on this subject is returned herewith.

FOR IMMEDIATE RELEASE January 1, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE SENATE OF THE UNITED STATES:

I return without my approval S. 2350, a bill "To amend the National Security Act of 1947, as amended, to include the Secretary of the Treasury as a member of the National Security Council."

The National Security Council is one of the most important organizations in the Executive Office of the President. The Council's function, under the law, is to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security. The President, the Vice President, the Secretary of State, and the Secretary of Defense are the statutory members of the Council. In addition, the President may, under the law, appoint by and with the advice and consent of the Senate the Secretaries and Under Secretaries of other executive departments and of the military departments to serve at his pleasure. No President has ever exercised this latter authority.

In my judgment, enactment of S. 2350 is not necessary. From its establishment in 1947, each President has invited from time to time additional officers to participate in National Security Council deliberations when matters specifically relating to their responsibilities have been considered. In line with this practice, the President invites the Secretary of the Treasury to participate in Council affairs when issues of substantial interest to the Department of the Treasury are involved. Thus, existing arrangements provide for adequate participation of the Secretary of the Treasury in National Security Council matters.

Furthermore, additional mechanisms exist to assure that the President receives advice which takes into account the proper integration and coordination of domestic and international economic policy with foreign policy and national security objectives. Both the Economic Policy Board and the Council for International Economic Policy provide the President with high level advice on economic matters. The Secretary of the Treasury is the Chairman of these two bodies on which the Secretary of State also serves.

I believe that S. 2350 is undesirable as well as unnecessary. The proper concerns of the National Security Council extend substantially beyond the statutory responsibilities and focus of the Secretary of the Treasury. Most issues that come before the Council on a regular basis do not have significant economic and monetary implications.

more

Moreover, a large number of executive departments and agencies have key responsibilities for programs affecting international economic policy. From time to time these programs influence importantly our foreign policy and national security decisions. The Treasury Department does not and could not represent all those interests. Extending full statutory membership on the National Security Council to the Secretary of the Treasury would not achieve the purpose of bringing to bear on decisions the full range of international economic considerations.

For these several reasons, I am concerned that increasing the statutory membership of the Council might well diminish its flexibility and usefulness as a most important advisory mechanism for the President.

In sum, S. 2350 is unnecessary, since adequate arrangements for providing advice to the President on the integration of economic and foreign policy already exist, and it is undesirable because the proposed arrangement is inconsistent with the purposes of the National Security Council and would lessen the current and desirable flexibility of the President in arranging for advice on the broad spectrum of international and national security policy matters.

GERALD R. FORD

THE WHITE HOUSE,
December 31, 1975

# # # # #

THE WHITE HOUSE

WASHINGTON

June 19, 1976

MEMORANDUM FOR: JACK MARSH

THRU: MAX L. FRIEDERSDORF

FROM: CHARLES LEPPERT, JR.

SUBJECT: H. Res. 1295, Resolution of Inquiry

Pursuant to your request, I have talked to Rep. "Doc" Morgan and Marian Czarnecki concerning the adequacy of our response to the resolution of inquiry. Both Morgan and Czarnecki indicated the response was adequate and that the Committee would meet to consider the resolution on Tuesday, June 22, 1976.

Doc Morgan indicated that the resolution was subject to a point of order and he was hopeful that this issue would be raised and the resolution disapproved and laid upon the table.

THE WHITE HOUSE

WASHINGTON

June 16, 1976

Dear Mr. Chairman:

This letter is in response to your request for comments on H. Res. 1295.

It is our view that this resolution is an inappropriate instrument for considering the kinds of activities set forth in H. Res. 1295. We believe that, regardless of the country involved, information on any activities such as those mentioned in H. Res. 1295 should be dealt with only by the appropriate committees of Congress with due consideration for protecting against public disclosure of information which could be harmful to the nation's foreign policy and national security. In addition, the adoption of H. Res. 1295 would be wholly inconsistent with the purpose of Section 662 of the Foreign Assistance Act of 1961, as amended. That provision, which resulted from the work of your Committee, was enacted specifically to keep Congress advised of any information such as that sought in the resolution of inquiry. If the resolution is now adopted, it would vitiate the procedures set up for this very purpose.

Based on the above consideration, it is our belief that approval of the H. Res. 1295 by the Committee on International Relations and the House of Representatives would be incompatible with the public interest.

Brent Scowcroft

The Honorable Thomas Morgan
House of Representatives
Washington, D. C.

6-15

Congress of the United States
Committee on International Relations
House of Representatives
Washington, D.C. 20515

June 14, 1976

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D.C. 20500

JUN 14 1976

Dear Mr. President:

I am writing to request your comments on a resolution of inquiry which was introduced in the House on Friday, June 11, 1976, and referred to the Committee on International Relations.

Enclosed are two copies of the resolution, H.Res. 1295, directing the President to provide the House of Representatives certain information with respect to any payment made by the United States to influence Italian politics.

As you know, the Committee must act on this resolution within 7 legislative days beginning today. We will appreciate receiving your comments as soon as possible but no later than Thursday, June 17, 1976.

Sincerely yours,

Thomas E. Morgan

Chairman

TEM:rkbm
Enclosure

CC: The Honorable Henry A. Kissinger

94th CONGRESS
2d SESSION

(Original signature of Member)

H. RES. 1295

IN THE HOUSE OF REPRESENTATIVES

Mr. Harrington submitted the following resolution; which was referred to the Committee on

RESOLUTION

Resolved, That not later than 10 days after the date of adoption of this resolution, the President shall furnish to the House of Representatives the following information:

(1) Within 5 years preceding the date on which information is furnished pursuant to this resolution and if known, has any person (including any civilian employee, member of the Armed Forces, or person under contract) acting on behalf of the United States Government or any agency or other instrumentality of the United States Government paid or offered to pay any funds, directly or indirectly--

(A) to the Italian Christian Democratic party or any member thereof, to any other political party or any other political organization in Italy or any member of any such party or organization, or to any government official or any candidate for any local or national political office in Italy; or

(B) to any newspaper, radio, television, advertising, or other media-related company or entity (or any employee or agent thereof) which has within its primary area of impact any part of Italy?

If so, for each such instance, furnish the following information to the extent known: the amount of funds involved; the date on which payment of such funds was offered and if such funds were paid, the date on which such payment was made; the identity of any person to whom payment was made and of the intended recipient of such payment; the instrumentality of the United States Government responsible for such payment; and the circumstances surrounding such payment.

(2) If known, were any individuals (A) assigned or otherwise attached to any United States embassy or

other diplomatic mission, or (B) employed by any United States or multinational corporation, involved in any way in any payment or offer described in paragraph (1) of this resolution? In addition, if known, were any funds which were involved in any such payment illegally exchanged for foreign currency either before or after any payment of such funds?

(3) Within 5 years preceding the date on which information is furnished pursuant to this resolution and if known, has any person (including any civilian employee, member of the Armed Forces, or person under contract) acting on behalf of the United States Government or any agency or other instrumentality of the United States Government participated in any meeting, discussion, or other contact with any national of Italy concerning the use of any extraconstitutional means to solve the Italian political crisis? If so, for each such instance, furnish the following information to the extent known: the identity of any person taking part in any such contact with an Italian national; the date on which such contact was made; the instrumentality of the United States Government responsible for such contact; and the circumstances surrounding such contact.

(4) Within 5 years preceding the date on which information is furnished pursuant to this resolution and if

known, has any person (including any civilian employee, member of the Armed Forces, or person under contract) acting on behalf of the United States Government or any agency or other instrumentality of the United States Government (other than any person acting in the course of an investigation of possible violations of any law of the United States) discussed, orally or in writing, with any United States or multinational corporation, or any employee or agent thereof, any payment or the offer of any payment of any funds, directly or indirectly, to any individual or entity described in subparagraphs (A) or (B) of paragraph (1) of this resolution?

94th CONGRESS, 2d SESSION | H. RES. _____

RESOLUTION

Directing the President to provide to the House of Representatives certain information with respect to any payment made by the United States to influence Italian politics.

By Mr. Harrington

_____, 19____ —Referred to the

Committee on _____

U.S. GOVERNMENT PRINTING OFFICE 27-084-1

MEMORANDUM

NATIONAL SECURITY COUNCIL

FILE

July 23, 1976

JUL 26 1976

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: LES JANKA

SUBJECT: Impending Congressional Action on Executive Agreements

As you will recall the President met with Senator Case and Representative Zablocki a year ago in June and elicited their agreement to delay legislation concerning executive agreements (EAs). This issue is once again alive. Chairman Morgan is sponsoring H. R. 4438, which would require the President to transmit to Congress copies of EAs that concern national commitments; should Congress pass a concurrent resolution expressing disapproval of an agreement, it would be nullified. Senator Clark is sponsoring S. Res. 486, which reaffirms the constitutional treaty power of the Senate by restricting the scope of EAs. Of the two resolutions, S. Res. 486 is the most extreme, permitting the Senate to require significant political, military, or economic commitments to be submitted as treaties.

Over the past three weeks, both Zablocki and Clark have held hearings on their legislation; Zablocki's concluded this week. Eight persons testified in favor of such legislation:

-- Historian Arthur Bastor, University of Washington, stated that the intent of the Framers was that Congress has a right and responsibility to demand that EAs be subjected to scrutiny by either the Senate or both Houses, and to disallow it if it constitutes a commitment that Congress has not made, and is not willing to make.

-- University of Chicago Law Professor Gerhard Casper found the "framework" legislation of H. R. 4438 an attempt to implement Constitutional powers, and create a reasonable balance between the Executive and Legislative branches.

-- ABA Chairman John Laylin questioned the right of Congress to subject to its veto EAs made pursuant to a treaty or the Constitution, but not those made pursuant to legislation.

-- Raoul Berger, who wrote a book on executive privilege, stated that the President is not constitutionally empowered to enter into EAs unilaterally, unless they are based on his treaty power.

-- Lawyer Ann Holland stated that the Constitution does not prohibit the use of the legislative veto over EAs; she advocates the provisions of H.R. 4438.

-- Former Ambassador to Romania Leonard C. Meeker argued that H.R. 4438 should be enacted only if a determined effort to create joint branch cooperation fails.

-- Fletcher Law Professor Ruhl J. Bartlett supported H.R. 4438, believing that Congress' role in foreign policy should be increased, and Presidential EAs should be congressionally examined.

-- With regard to Clark's S. Res. 486, Arthur Bastor, taking a strict constructionist view, cited references of the Framers' intentions with regards to the branches' powers; in short, the Executive has usurped prerogatives, and the Senate must reaffirm them.

-- Princeton Professor Richard Falk stated that S. Res. 486 could provide a valuable additional legislative step towards the roles of both branches in the setting of significant commitments to foreign governments.

In support of the Administration's position, State Legal Advisor Monroe Leigh, Assistant Attorney-General Antonin Scalia, and University of Virginia Professor John Norton Moore cited constitutional and legal references to show that the Congress would seriously encroach on Executive power by these resolutions.

One more day of hearings will be held this next week on S. Res. 486. While Clark appears willing to move cautiously, members of the HIRC strongly feel that H.R. 4438 will be reported. Some revisions have been suggested for both resolutions, which could make them a few degrees more acceptable to the Executive. It was felt by those in favor of the legislation that the Executive's promise of consultation and cooperation had not been fulfilled.

I will keep you posted on further developments, but I feel that we are headed for another tug-of-war, because Zablocki, Morgan, and Clark all strongly feel that the Executive won't cooperate and consult, unless it is bound to do so. You may wish to alert the President to this cloud on the horizon.

cc: Phil Buchen
Bill Kendall
Charlie Leppert