(b) Each member of the corporation, other than honorary and associate members, shall have the right to vote in accordance with the constitution and bylaws of the corporation.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

SEC. 7. (a) Upon enactment of this Act the membership of the initial board of directors of the corporation shall consist of the following persons—

Mrs. Edith V. Knowles, Post Office Box 1703, Albany, Georgia 31702;

Mrs. Pauline T. Bartsch, 9 East Narberth Terrace; Collingswood, New Jersey 08108;

Mrs. Geraldine B. Chittick, Post Office Box 306, Frankfort, Indiana 46041;

Mrs. Joy Doye, 4224 Chowen Avenue South, Minneapolis, Minnesota 55410;

Mrs. Jeanette B. Early, 5314 Yorkwood, Houston, Texas 77016;

Mrs. Mary R. Galotta, 117 Pine Street, Lowell, Massachusetts 01851;

Mrs. Marie E. Gammill, 4330 East Eighteenth Avenue, Denver, Colorado 80220;

Mrs. Franc F. Gray, 6901 Penn Avenue South, Apartment 204, Richfield, Minnesota 55423;

Mrs. Darlene McDonald, 842 N.N Karlov Avenue, Chicago, Illinois 60651;

Mrs. Marie B. Palmer, 4294 Nimons Street, Orlando, Florida 32805;

Mrs. Lorraine S. Patterson, 320 Penwood Road, Silver Spring, Maryland 20902;

Mrs. Peggy Simonfy, 107 Mandalay Road, Fairview, Massachusetts 01020;

Mrs. Johnnie D. Spillman, 3145 Steele Street, Denver, Colorado 80205;

Mrs. Ingrid G. Stewart, 138 Devonshire Drive, San Antonio, Texas 78209;

Mrs. Odessa Wycoff, 7209 North Hammond, Oklahoma City, Oklahoma 73132;

Mrs. Larue Yessen, 1099 East Fifty-First Street, Brooklyn, New York 11234.

Mrs. Lavone Tueting, 5325 Beard Avenue South, Minneapolis, Minnesota 55410.

(b) Thereafter, the board of directors of the corporation shall consist of such number (not less than fifteen), shall be selected in such manner (including the filling of vacancies) and shall serve for such term as may be prescribed in the constitution and bylaws of the corporation.

(c) The board of directors shall be the governing board of the corporation and shall, during the intervals between corporation meetings, be responsible for the general policies and program of the corporation. The board shall be responsible for all finance.

OFFICERS; ELECTION OF OFFICERS

SEC. 8. (a) The officers of the corporation shall be a chairman of the board, a president, a vice president, a secretary, and a treasurer. The duties of the officers shall be as prescribed in the constitution and bylaws of the corporation. Other officer positions may be created as prescribed in the constitution and bylaws of the corporation.

(b) Officers shall be elected annually at the annual meeting of the corporation.

USE OF INCOME; LOANS TO OFFICERS, DIRECTORS, OR EMPLOYEES

SEC. 9. (a) No part of the income or assets of the corporation shall in to any member, officer, director, or be distributable to any such person otherwise than upon dissolution or final liquidation of the corporation as provided in section 16 of this Act. Nothing in this subsection, however, shall be construed to prevent the payment of compensation to officers of the corporation in amounts approved by the executive committee of the corporation.

(b) The corporation shall not make loans to its officers, directors, or employees. Any director who votes for or assents to the making of such loans shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

NONPOLITICAL NATURE OF CORPORATION

SEC. 10. The corporation, and its officers, directors, and duly appointed agents as such, shall not contribute to or otherwise support or assist any political party or candidate for office.

LIABILITY FOR ACTS OF OFFICERS AND AGENTS

SEC. 11. The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

COMPREHENSIVE PRIVILEGES

SEC. 12. Such provisions, privileges, and prerogatives as have been granted heretofore to other national veterans' organizations by virtue of their being incorporated by Congress are hereby granted and accrue to the Gold Star Wives of America.

PROHIBITION AGAINST ISSUANCE OF STOCK OR PAYMENT OF DIVIDENDS

SEC. 13. The corporation shall have no power to issue any shares of stock nor to declare nor pay any dividends.

BOOKS AND RECORDS; INSPECTION

SEC. 14. The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors; and committees having any of the authority of the board of directors; and it shall also keep at its principal office a record of the names and addresses of its members entitled to vote. All books and records of the corporation may be inspected by any member entitled to vote, or his agent or attorney, for any proper purpose, at any reasonable time.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 15. (a) The accounts of the corporation shall be audited annually, in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audit shall be conducted at the place or places where the accounts of the corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit shall be made available to the person or persons conducting the audit; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(b) A report of such audit shall be submitted to the Congress not later than six months following the close of the fiscal year for which the audit was made. The report shall set forth the scope of the audit and shall include such statements as are necessary to present fairly the corporation's assets and liabilities, surplus or deficit with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the corporation's income and expenses during the year including the results of any trading, manufacturing, publishing, or other commercial-type endeavor carried on by the corporation, together with the independent auditor's opinion of those statements. The reports shall not be printed as a public document.

LIQUIDATION

SEC. 16. Upon final dissolution of liquidation of the corporation, and after discharge or satisfaction of all outstanding obligations and liabilities, the remaining assets of the corporation may be distributed in accordance with the determination of the board of directors of the corporation and in compliance with the constitution and bylaws of the corporation and all Federal and State laws applicable thereto.

EXECUTIVE RIGHT TO NAME, EMBLEMS, SEALS, AND BADGES

SEC. 17. The corporation shall have the sole and exclusive right to use the name Gold Star Wives of America. The corporation shall have the exclusive and sole right to use, or to allow or refuse the use of, such emblems, seals, and badges as have heretofore been used by the corporation referred to in section 18 in carrying out its program. Nothing in this Act shall interfere or conflict with established or vested rights.

TRANSFER OF ASSETS

SEC. 18. The corporation may acquire the assets of the Gold Star Wives of America, Incorporated, chartered as a nonprofit organization in the State of New York, upon discharging or satisfactorily providing for the payment and discharge of all of the liability of such corporation and upon complying with all laws of the State of New York applicable thereto.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHAPTER

SEC. 19. The right to alter, amend, or repeal this Act is hereby expressly reserved.

By Mr. KENNEDY (for himself, Mr. EASTLAND, Mr. MCCLELLAN, Mr. NELSON, Mr. INOUYE, Mr. MATHIAS, Mr. BAYH, and Mr. THURMOND):

S. 1566. A bill to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information; to the Committee on the Judiciary; and, if and when reported by that committee, to the Select Committee on Intelligence, by unanimous consent.

FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1977

Mr. KENNEDY. Mr. President, today I am introducing legislation—endorsed and supported by this administration—which would at long last place foreign intelligence electronic surveillance under the rule of law. The legislation, which has broad bipartisan support, requires that a judicial warrant be secured before the Government may engage in electronic surveillance in the United States for purposes of obtaining foreign intelligence information. I view it as the first step in the ongoing effort of this administration and the Congress to place meaningful restrictions on the largely unchecked power of the intelligence community. It is, I hope, an important signal of what is yet to come in the way of effective FBI and CIA charter reform.

This bill is not a hastily conceived idea. During the past 6 years Senator NELSON, Senator MATHIAS, and I have periodically introduced legislation to regulate foreign intelligence electronic surveillance. Since 1971 I have corresponded with the Justice Department in an effort to breach the mask of secrecy surrounding the electronic surveillance decisionmaking process. Various hearings have been held over the years by the Subcommittee on Administrative Practice and Procedure and other congressional committees, all pointing to the same con-

country. Another aim is to promote activities and interests designed to foster among its members the proper mental attitude to face the future with courage. Direct aid to the widows and children of former servicemen is likewise an obligation which this organization has assumed.

For lack of a Federal charter the organization has repeatedly been hindered and prevented from giving the assistance to new widows that could have been available to them through Gold Star Wives of America. Efforts to make the organization known through survivor assistance officers at military installations have been refused on the basis of not being recognized as a reputable organization, while in other instances contacts at military bases resulted in inquiries going to the Department of Defense regarding the reliability of Gold Star Wives of America. Experiences on these occasions would indicate that the only way the organization could acquire the respect and stature so necessary to conduct its activities is through congressional recognition.

Membership continues to be nationwide with members in almost every State and chapters in half the States. Although the organization was formed by World War II widows, the membership has always remained open to those who have later become widows of servicemen in any active-duty assignment. A number of widows from the Korean war are active members. During the Vietnam conflict membership grew and the number of local chapters increased as hundreds of new widows turned to Gold Star Wives of America for assistance with their financial and emotional problems. Often the painful experience of widowhood is further complicated by unfortunate circumstances surrounding survivor benefits, and the legislative and service committees have responded to each request. But again the organization has been hampered by its lack of a national charter in reaching all the people who could have been helped.

Mr. President, I have carefully examined the criteria set forth in 1969 in the standards for the granting of Federal Charters by subcommittees of the Senate and House Committees on the Judiciary. In every aspect it appears to me that the Gold Star Wives of America, Inc., more than measures up to those required standards. It is clearly a national permanent organization operating in the public interest; the character of this organization is such that chartering by the Congress as a Federal corporation is the only appropriate form of incorporation; it is solely a patriotic, nonprofit, nonpartisan organization devoted to civic and membership betterment; and it aspires to provide nationwide services which cannot be adequately organized without a nationally granted charter.

Mr. President I know of no other group more deserving of national incorporation than the Gold Star Wives of America. It merits the national stature and corporate structure required to achieve its worthwhile goals.

I ask unanimous consent that this bill be printed in the RECORD.

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

S. 1561

A bill to incorporate the Gold Star Wives of America

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following named persons, to wit:

Mrs. Lavone Tueting, 5325 Beard Avenue South, Minneapolis, Minnesota 55410;

Mrs. Karen T. Sintic, 9519 North Laramie Avenue, Skokie, Illinois 60076;

Mrs. Rachel Flimir, 600 Bethell Street Northeast, Leeds, Alabama 35094;

Mrs. Rose Stalcup, 1090 Hanover, Aurora, Colorado 80010;

Mrs. Itelia J. Butler, Post Office Box 3943, Albany, Georgia 31706;

Mrs. Carol DeVore, 4201 Nineteenth Avenue South, Minneapolis, Minnesota 55407;

Mrs. Delores Peterson, Route No. 2, Box 121, St. Cloud, Florida 32769;

Mrs. Edith V. Knowles, Post Office Box [illegible], Albany, Georgia 31703;

Mrs. Pauline T. Bartsch, 9 East Narberth Terrace, Collingswood, New Jersey 08108;

Mrs. Geraldine B. Chittick, Post Office Box 3[illegible], Frankfort, Indiana 46041;

Mrs. [illegible] Dove, 4224 Chowen Avenue South, Minneapolis, Minnesota 55410;

Mrs. Jeanette B. Early, 5314 Yorkwood, Houston, Texas, 77016;

Mrs. Mary [illegible]. Galotta, 117 Pine Street, Lowell, Massachusetts 01851;

Mrs. Marie [illegible] Gammill, 4330 East 18th Avenue, Denver, Colorado, 80220;

Mrs. Franc F. [illegible]ray, 6901 Penn Avenue South, Apartment [illegible]4, Richfield, Minnesota 55423;

Mrs. Darlene McDo[illegible]d, 842 N. Karlov Avenue, Chicago, Illinois [illegible]651;

Mrs. Marie B. Palmer, [illegible]294 Nimons Street, Orlando, Florida 32805;

Mrs. Lorraine S. Patte[illegible]n, 320 Penwood Road, Silver Spring, Maryland 20901;

Mrs. Peggy Simonfy, 107 [illegible]ndalay Road, Fairview, Massachusetts 0102[illegible];

Mrs. Johnnie D. Spillman, [illegible]145 Steele Street, Denver, Colorado 80205;

Mrs. Ingrid G. Stewart, 138[illegible] Devonshire Drive, San Antonio, Texas 78209;

Mr. Odessa Wycoff, 7209 North H[illegible]mond, Oklahoma City, Oklahoma 73132;

Mrs. Larue Yessen, 1099 East Fift[illegible]first Street, Brooklyn, New York 11234;

and their successors are hereby created and declared to be a body corporate by the name of Gold Star Wives of America (hereinafter called the corporation) and by that name shall be known and have perpetual succession and the power and limitations contained in this Act.

COMPLETION OF ORGANIZATION

SEC. 2. A majority of the persons named in the first section of this Act is authorized to complete the organization of the corporation by the election of officers and employees, the adoption of a constitution and bylaws, not inconsistent with this Act, and the doing of such other acts as may be necessary for such purpose.

OBJECTS AND PURPOSES OF CORPORATION

SEC. 3. The objects and purposes of the corporation shall be—

(1) to assist in upholding the Constitution and laws of the United States of America, and to inculcate a sense of individual obligation to the community, State, and Nation;

(2) to honor the memory of those who made the supreme sacrifice in the service of our country;

(3) to safeguard and transmit to posterity the principles of justice, freedom, and democracy for which members of our armed services fought and died;

(4) to provide the benefits of a happy, healthful, and wholesome life to minor children of persons who died in the service of our country;

(5) to promote activities and interests designed to foster among its members the proper mental attitude to face the future with courage; and

(6) to aid, whenever necessary, widows and children of persons who died in the service of our country.

CORPORATE POWERS

SEC. 4. The corporation shall have power—

(1) to sue and be sued, complain, and defend in any court of competent jurisdiction;

(2) to adopt, alter and use a corporate seal;

(3) to choose such officers, directors, trustees, managers, agents, and employees as the business of the corporation may require;

(4) to adopt, amend, and alter a constitution and bylaws, not inconsistent with the laws of the United States or any State in which the corporation is to operate, for the management of its property and the regulation of its affairs;

(5) to contract and be contracted with;

(6) to charge and collect membership dues, subscription fees, and receive contributions or grants of money or property to be devoted to the carrying out of its purposes;

(7) to take and hold by lease, gift, purchase, grant, devise, bequest, or otherwise any property, real or personal, necessary for attaining the objects and carrying into effect the purposes of the corporation, subject to applicable provisions of law in any State (A) governing the amount or kind of real and personal property which may be held by, or (B) otherwise limiting or controlling the ownership of real or personal property by a corporation operating in such State;

(8) to transfer, encumber, and convey real or personal property;

(9) to borrow money for the purposes of the corporation, issue bonds therefor, and secure the same by mortgage, subject to all applicable provisions of Fedeal or State law;

(10) to adopt, alter, use, and display such emblems, seals, and badges as it may determine; and

(11) to do any and all acts and things necessary and proper to carry out the objects and purposes of the corporation, and for such purpose the corporation shall also have, in addition to the foregoing in this section and subsection, the rights, powers, duties, and liabilities of the existing corporation referred to in section 18 as far as they are not modified or superseded by this Act.

PRINCIPAL OFFICE; SCOPE OF ACTIVITIES; DISTRICT OF COLUMBIA AGENT

SEC. 5. (a) The principal office of the corporation shall be located in Albany, Georgia, or such other place as may later be determined by the board of directors, but the activities of the corporation shall not be confined to that place and may be conducted throughout the various States and possessions of the United States.

(b) The corporation shall maintain at all times in the District of Columbia a designated agent authorized to accept service of process for the corporation, and notice to or service upon such agent, or mailed to the business address of such agent, shall be deemed notice to or service upon the corporation.

MEMBERSHIP; VOTING RIGHTS

SEC. 6. (a) Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided in this Act, be determined as the constitution and bylaws of the corporation may provide.

clusion—the need for Congress to enact legislation establishing statutory procedures for the use of electronic surveillance to gather foreign intelligence information.

Last year the Senate came very close to passing a comprehensive, effective bill in this area. Working closely with Attorney General Edward Levi, the Ford administration, and the Senate Select Committee on Intelligence, I introduced S. 3197, a bill which established a detailed judicial warrant procedure as a prerequisite for engaging in foreign intelligence electronic surveillance. The major features of S. 3197 required that all such surveillance be limited to "foreign powers" and "agents of a foreign power"; a judicial warrant be secured on the basis of a showing of "probable cause" that the target was either an "agent of a foreign power" or the foreign power itself; certain designated executive branch officials certify under oath and in writing to the court that the information sought was "foreign intelligence information"; a detailed minimization procedure be spelled out in each application to the court, thereby eliminating extraneous or irrelevant information from being obtained by those engaged in the surveillance; warrantless emergency electronic surveillance be limited to a maximum of 24 hours, after which time a warrant had to be secured.

This bill—a major achievement of Attorney General Edward Levi—was referred to the Senate Judiciary Committee where, after important improvements were made, it was favorably reported by a lopsided vote of 11 to 1. It was then referred to the Senate Select Committee on Intelligence where, under the impressive leadership of Senators INOUYE and BAYH, detailed hearings were held and the bill was further improved. That committee favorably reported the bill by a vote of 13 to 1. Unfortunately, despite this overwhelming show of support last year by two Senate committees, time ran out before the full Senate could act on the legislation.

Mr. President, this legislation picks up where S. 3197 left off. Using that bill as a foundation, it builds in further important improvements and safeguards. It is the culmination of past efforts and present hopes. It seeks to end the all too common abuses of recent history by providing substantive and procedural limitations on the heretofore unchecked power of the executive branch to engage in electronic surveillance for national security purposes.

I have always had grave reservations about the Government's role in engaging in electronic surveillance, especially wiretapping. The complexity of the problem must not be underestimated. Electronic surveillance can be a useful tool for the Government's gathering of certain kinds of information; yet, if abused, it can also constitute a particularly indiscriminate and penetrating invasion of the privacy of our citizens. My objective over the past 6 years has been to reach some kind of fair balance that will protect the security of the United States without infringing on our citizens' human liberties and rights.

This bill goes a long way in striking that balance. Like S. 3197, it provides detailed statutory restrictions on the power of the Government to engage in foreign intelligence electronic surveillance. Its provisions are applicable to all such surveillance which occurs in the United States—the bill does not cover surveillance conducted against American citizens or foreign nationals abroad; such legislation, which I also support, is now being drafted under the leadership of Senator BAYH. It limits such surveillance to "foreign powers" or "agents of a foreign power" as defined in the bill.

American citizens and lawful resident aliens, therefore, can be targets of electronic surveillance only if: they are, first, knowingly engaged in "clandestine intelligence activities which involve or will involve a violation" of the criminal law; second, knowingly engaged in activities "that involve or will involve sabotage or terrorism for or on behalf of a foreign power"; or third, "pursuant to the direction of an intelligence service or intelligence network of a foreign power" are knowingly and secretly collecting or transmitting foreign intelligence information in a manner harmful to the security of the United States. All other persons—such as illegal aliens or foreign visitors—can be targets only if they are either officers or employees of a foreign power or are "knowingly engaging in clandestine intelligence activities for or on behalf of a foreign power under circumstances which indicate that such activities would be harmful to the security of the United States."

These statutory provisions which define the targets who may be subjected to foreign intelligence electronic surveillance constitute the crux of this legislation. They relegate to the past the wiretapping abuses of recent years. Neither Martin Luther King, Jr., Joseph Kraft, or Morton Halperin could possibly fall within such narrow definitions.

But the bill also sets out specific standards and procedures which must be followed in commencing such surveillance against "foreign powers" or "agents of a foreign power." "Foreign intelligence information" and "electronic surveillance" are carefully defined, statutory minimization procedures are spelled out and, most importantly, a judicial warrant must be secured before engaging in such surveillance. Under this warrant procedure the Government applies to one of seven special district court judges for an order to engage in such surveillance. The Attorney General must first approve each application. The application must state, inter alia, the identity or a description of the target, information that the target is "a foreign power or an agent of a foreign power," what proposed minimization procedures will be employed, and a designation or description of the information sought.

In addition, a designated executive branch official must certify to the court "that the information sought is foreign intelligence information" and "that the purpose of the surveillance is to obtain foreign intelligence information." This provision provides an internal check on arbitrary Government approval of electronic surveillance by establishing a method of written accountability within the executive branch.

The court may issue a warrant authorizing the surveillance only after making certain detailed findings, and concluding that "there is probable cause to believe that the target of the electronic surveillance is a foreign power or an agent of a foreign power." This warrant requirement guarantees at long last the type of external control on executive branch decisions to engage in electronics surveillance which I and others have long advocated. The courts, not the executive, ultimately rule on whether the surveillance should occur. If the target is a designated foreign power, the warrant may authorize such surveillance for up to 1 year; in all other cases a 90-day period is the maximum authorized. Extensions may be granted only after an additional application is made to the court. As in S. 3197, an emergency warrantless surveillance is limited to a maximum of 24 hours, after which time a warrant must be secured.

Mr. President, the legislation introduced today improves S. 3197 in a number of important respects. Most importantly, the bill repeals the so-called executive "inherent power" disclaimer clause currently found in section 2511(3) of title 18 of the United States Code, and provides instead that the statutory procedures of this legislation, and title 18, "shall be the exclusive means" for conducting electronic surveillance in the United States. Overseas surveillance is not covered by this legislation. The highly controversial disclaimer has often been cited as evidence of a congressional ratification of the President's inherent constitutional power to engage in electronic surveillance in order to obtain foreign intelligence information essential to the national security. Despite the admonition of the Supreme Court in the Keith case that the language of the disclaimer was "neutral," and did not reflect any such congressional recognition of inherent power, the section has been a major source of controversy. By repealing section 2511(3) and expressly stating that the statutory warrant procedures spelled out in the law must be followed in conducting electronic surveillance in the United States, this legislation ends the 8-year ongoing debate over the meaning and scope of the inherent power disclaimer clause.

The bill also makes important improvements in the certification procedure. Under S. 3197 the court had no authority to review the validity of the executive branch certification. Today's legislation, however, gives the reviewing court the power and authority to examine the certification in cases involving American citizens or lawful resident aliens and to reject the certification if the statements therein are clearly erroneous.

Finally, the scope of this bill is broader than S. 3197, encompassing electronic surveillance conducted in the United States by the National Security Agency—S. 3197 exempted all NSA activities.

The bill is by no means perfect in all respects. In some areas it retreats from the provisions of S. 3197. I must candidly

acknowledge that I harbor my own serious reservations as to certain sections of the bill. First, there remains the highly controversial issue surrounding the noncriminal standard and the extent to which surveillance can be authorized to investigate conduct which does not rise to the level of a Federal crime. S. 3197 retained a provision which I reluctantly agreed to which allowed the Government to engage in electronic surveillance without demonstrating "probable cause" that a crime was being committed. But the bill limited this loophole to persons acting at the direction of a foreign intelligence network, who were knowingly and secretly transmitting information to that network where the information was harmful to the security of the United States. The bill I introduce today retains this narrow noncriminal standard and, in fact, expands it in those cases involving illegal aliens or foreign visitors. I have never been altogether satisfied with the explanations offered by the Department of Justice as to why a noncriminal standard is necessary at all, and I am particularly troubled by the willingness of the current administration to expand the loophole beyond that thought necessary by Attorney General Levi. Under any plain reading of the statutory language, it seems to me that the activities described could effectively fall within the ambit of our espionage and conspiracy laws.

Another mjor question mark concerning the bill involves the decision of the Justice Department to grant less protections and safeguards to illegal aliens or foreign visitors. This disquieting feature of the bill was absent from S. 3197. When it comes to illegal aliens or foreign visitors today's legislation provides an expanded noncriminal standard, does not allow the court to look behind the executive branch certification, and allows the Government to use the information obtained as a result of the surveillance for whatever purpose it deems necessary. The fourth amendment of the Constitution speaks in terms of protecting all "persons"—not just American citizens and lawful resident aliens—and to the extent that this bill establishes different standards and procedures for illegal aliens and temporary foreign visitors, it is open to criticism.

Finally, the detailed reporting requirements and congressional oversight provisions found in S. 3197 are practically nonexistent in this bill. One lesson learned from the events and abuses of recent years is the critical need for both appropriate disclosure of the quantity and scope of the surveillance engaged in, and a renewed oversight commitment by the Congress. Such congressional oversight is particularly important since, by its very nature, foreign intelligence surveillance must be conducted in secret. This bill reflects the need for such secrecy; judicial review is limited to a select panel and routine notice of such surveillance to the target is avoided. For these reasons effective Congressional oversight is a sin qua non for any proper implementation of the statute. Yet the bill is completely silent on the role to be played by the Congress in overseeing compliance with its provisions. Fortunately, the Justice Department has informed me of its willingness to comply with whatever oversight provisions are written into the statute following hearings by the Senate Judiciary Committee and Select Committee on Intelligence.

Mr. President with this legislation we near the end of a 6-year effort to establish statutory safeguards in the area of foreign intelligence electronic surveillance. With the enactment of this legislation—which complements existing electronic surveilalnce provisions found in title III of the Safe Streets Act—no wiretapping or electronic surveillance for whatever purpose, will be allowed in the United States except as permitted by statute. The bill provides the Senate with an enlightened starting point from which to fashion final legislation. Despite my own limited reservations with this bill, I remain even more uncomfortable leaving the American people with no legislative protections whatsoever governing national security wiretapping. I am not committed to each word or subsection of the bill. Some terms will need clarification; some procedures will need refining; some sections will undergo change. For the past 4 months I have been involved in lengthy negotiations with the Department of Justice and the administration in an effort to modify language and alter various provisions. Major changes have been agreed upon and more changes will follow. That is what the legislative process is all about.

Mr. President, the Congress has not passed any major legislation dealing with electronic surveillance since 1968. During this long interim there have been too many instances of abuse, too many examples of surveillance based on arbitrary whim and caprice. This bill goes a long way in satisfying the objections I and others have expressed over the years. Both the President and the Attorney General are to be congratulated for their constructive role in supporting this legislation. I am confident that if the legislative deliberations concerning this bill are conducted in a similar spirit of cooperation, a workable, just piece of legislation will be the result.

Mr. President, Senate hearings on this important legislation are already scheduled in the Senate Judiciary Committee for Monday, June 13. The bill will then be referred to the Senate Select Committee on Intelligence.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1566

A bill to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Intelligence Surveillance Act of 1977".

SEC. 2. Title 18, United States Code, is amended by adding a new chapter after chapter 119 as follows:

"Chapter 120.—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

"Sec.
"§ 2521. Definitions.
"2522. Authorization for electronic surveillance for foreign intelligence purposes.
"2523. Designation of judges authorized to grant orders for electronic surveillance.
"2524. Application for an order.
"2525. Issuance of an order.
"2526. Use of information.
"2527. Report of electronic surveillance."

"§ 2521. Definitions.

"(a) Except as otherwise provided in this section the definitions of section 2510 of this title shall apply to this chapter.

"(b) As used in this chapter—

"(1) 'Foreign power' means—

"(A) a foreign government or any component thereof, whether or not recognized by the United States;

"(B) a faction of a foreign nation or nations, not substantially composed of United States persons;

"(C) an entity, which is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

"(D) a foreign-based terrorist group;

"(E) a foreign-based political organization, not substantially composed of United States persons; or

"(F) an entity which is directed and controlled by a foreign government or governments.

"(2) 'Agent of a foreign power' means—

"(A) any person, other than a United States citizen or an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), who—

"(i) is an officer or employee of a foreign power;

"(ii) knowingly engages in clandestine intelligence activities for or on behalf of a foreign power under circumstances which indicate that such activities would be harmful to the security of the United States; or

"(iii) conspires with or knowingly aids or abets a person described in paragraph (ii) above.

"(B) any person who—

"(i) knowingly engages in clandestine intelligence activities for or on behalf of a foreign power, which activities involve or will involve a violation of the criminal statutes of the United States;

"(ii) knowingly engages in activities that involve or will involve sabotage or terrorism for or on behalf of a foreign power;

"(iii) pursuant to the direction of an intelligence service or intelligence network of a foreign power, knowingly collects or transmits information or material to an intelligence service or intelligence network of a foreign power in a manner intended to conceal the nature of such information or material or the fact of such transmission or collection, under circumstances which indicate the transmission of such information or material would be harmful to the security of the United States, or that lack of knowledge by the United States of such collection or transmission would be harmful to the security of the United States; or

"(iv) conspires with or knowingly aids or abets any person engaged in activities described in subsections B(i)-(iii) above.

"(3) 'Terrorism' means activities which—

"(A) are violent acts or acts dangerous to human life which would be criminal under

the laws of the United States or of any State if committed within its jurisdiction; and

"(B) appear to be intended—

"(i) to intimidate or coerce the civilian population,

"(ii) to influence the policy of a government by intimidation or coercion, or

"(iii) to affect the conduct of a government by assassination or kidnapping;

"(4) 'Sabotage' means activities which would be prohibited by title 18, United States Code, chapter 105, if committed against the United States.

"(5) 'Foreign intelligence information' means—

"(A) information which relates to, and is deemed necessary to the ability of the United States to protect itself against, actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

"(B) information with respect to a foreign power or foreign territory, which relates to, and because of its importance is deemed essential to:

"(i) the national defense or the security of the Nation; or

"(ii) the successful conduct of the foreign affairs of the United States;

"(C) information which relates to, and is deemed necessary to the ability of the United States to protect against terrorism by a foreign power or an agent of a foreign power;

"(D) information which relates to, and is deemed necessary to the ability of the United States to protect against sabotage by a foreign power or an agent of a foreign power; or

"(E) information which relates to, and is deemed necessary to the ability of the United States to protect against the clandestine intelligence activities of an intelligence service or network of a foreign power or an agent of a foreign power;

"(6) 'Electronic surveillance' means—

"(A) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, where the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

"(B) the acquisition by an electronic, mechanical, or other surveillance device, of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, where such acquisition occurs in the United States while the communication is being transmitted by wire;

"(C) the intentional acquisition, by an electronic, mechanical, or other surveillance device, of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and where both the sender and all intended recipients are located within the United States; or

"(D) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

"(7) 'Attorney General' means the Attorney General of the United States (or Acting Attorney General) or an Assistant Attorney General specially designated in writing by the Attorney General.

"(8) 'Minimization procedures' means procedures which are reasonably designed to minimize the acquisition, retention, and dissemination of any information concerning United States persons without their consent that does not relate to the ability of the United States—

"(A) to protect itself against actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

"(B) to provide for the national defense or security of the Nation;

"(C) to provide for the conduct of the foreign affairs of the United States;

"(D) to protect against terrorism by a foreign power or an agent of a foreign power;

"(E) to protect against sabotage by a foreign power or an agent of a foreign power; or

"(F) to protect against the clandestine intelligence activities of an intelligence service or network of a foreign power or an agent of a foreign power;

and which are reasonably designed to insure that information which relates solely to the conduct of foreign affairs shall not be maintained in such a manner as to permit the retrieval of such information by reference to a United States person, without his consent, who was a party to a communication acquired pursuant to this chapter; and if the target of the electronic surveillance is a foreign power which qualifies as such solely on the basis that it is an entity controlled and directed by a foreign government or governments, and unless there is a probable cause to believe that a substantial number of the officers or executives of such entity are officers or employees of a substantial number of the officers or executives of such entity are officers or employees of a foreign government, or agents of a foreign power as defined in section 2521(b)(2)(B), procedures which are reasonably designed to prevent the acquisition, retention, and dissemination of communications of unconsenting United States persons who are not officers or executives of such entity responsible for those areas of its activities which involve foreign intelligence information.

"(9) 'United States person' means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence or a corporation which is incorporated in the United States, but not including corporations which are foreign powers.

"(10) 'United States' when used in a geographic sense means all areas under the territorial sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

"§ 2522. Authorization for electronic surveillance for foreign intelligence purposes

"Applications for a court order under this chapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to Federal judges having jurisdiction under section 2523 of this chapter, and a judge to whom an application is made may grant an order, in conformity with section 2525 of this chapter, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.

"§ 2523. Designation of judges authorized to grant orders for electronic surveillance

"(a) The Chief Justice of the United States shall publicly designate seven district court judges, each of whom shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this chapter, except that no judge designated under this subsection shall have jurisdiction of the same application for electronic surveillance under this chapter which has been denied previously by another judge designated under this subsection. If any judge so designated denies an application for an order authorizing electronic surveillance under this chapter, such judge shall provide immediately for the record a written statement of each reason for his decision and, on motion of the United States, the record shall be transmitted, under seal, to the special court of review established in subsection (b).

"(b) The Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a special court of review which shall have jurisdiction to review the denial of any application made under this chapter. If such special court determines that the application was properly denied, the special court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

"(c) Proceedings under this chapter shall be conducted as expeditiously as possible. The record of proceedings under this chapter, including applications made and orders granted shall be sealed and maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of Central Intelligence.

"§ 2524. Application for an order

"(a) Each application for an order approving electronic surveillance under this chapter shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 2523 of this chapter. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this chapter. It shall include the following information—

"(1) the identity of the Federal officer making the application;

"(2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

"(3) the identity or a description of the target of the electronic surveillance;

"(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

"(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

"(B) the facilities or the place at which the electronic surveillance is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

"(5) a statement of the proposed minimization procedures;

"(6) when the target of the surveillance is not a foreign power as defined in section 2521(b)(1)(A), (B) or (C), a detailed description of the nature of the information sought;

"(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

"(A) that the information sought is foreign intelligence information;

"(B) that the purpose of the surveillance is to obtain foreign intelligence information;

"(C) that such information cannot reasonably be obtained by normal investigative techniques;

"(D) including a designation of the type of foreign intelligence information being sought according to the categories described in section 2521(b)(5);

"(E) when the target of the surveillance is not a foreign power, as defined in section 2521(b)(1)(A), (B), or (C), including a statement of the basis for the certification that—

"(i) the information sought is the type of foreign intelligence information designated; and

"(ii) such information cannot reasonably be obtained by normal investigative techniques;

"(F) when the target of the surveillance is a foreign power, as defined in section 2521(b)(1)(A), (B), or (C), stating the period of time for which the surveillance is required to be maintained;

"(8) when the target of the surveillance is not a foreign power, as defined in section 2521(b)(1)(A), (B), or (C), a statement of the means by which the surveillance will be effected, and when the target is a foreign power, as defined in section 2521(b)(1)(A), (B), or (C), a designation of the type of electronic surveillance to be used according to the categories described in section 2521(b)(6);

"(9) a statement of the facts concerning all previous applications that have been made to any judge under this chapter involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application; and

"(10) when the target of the surveillance is not a foreign power, as defined in section 2521(b)(1)(A), (B), or (C), a statement of the period of time for which the electronic surveillance is required to be maintained. If the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this chapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

"(b) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

"(c) The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 2525 of this chapter.

"§ 2525. Issuance of an order

"(a) Upon an application made pursuant to section 2524 of this title, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

"(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

"(2) the application has been made by a Federal officer and approved by the Attorney General;

"(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

"(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

"(B) the facilities or place at which the electronic surveillance is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

"(4) the proposed minimization procedures meet the definition of minimization procedures under section 2521(b)(8) of this title;

"(5) the application which has been filed contains the description and certification or certifications, specified in section 2524(a)(7) and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 2524(a)(7)(E):

"(b) An order approving an electronic surveillance under this section shall—

"(1) specify—

"(A) the identity or a description of the target of the electronic surveillance;

"(B) the nature and location of the facilities or the place at which the electronic surveillance will be directed;

"(C) the type of information sought to be acquired;

"(D) when the target of the surveillance is not a foreign power, as defined in section 2521(b)(1)(A), (B), or (C), the means by which the electronic surveillance will be effected, and when the target is a foreign power, as defined in section 2521(b)(1)(A), (B), or (C), a designation of the type of electronic surveillance to be used according to the categories described in section 2521(b)(6); and

"(E) the period of time during which the electronic surveillance is approved; and

"(2) direct—

"(A) that the minimization procedures be followed;

"(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, contractor, or other specified person furnish the applicant forthwith any and all information, facilities, or technical assistance, necessary to accomplish the electronic surveillance in such manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, contractor, or other person is providing that target of electronic surveillance;

"(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished which such person wishes to retain;

"(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

"(c) An order issued under this section may approve an electronic surveillance not targeted against a foreign power, as defined in section 2521(b)(1)(A), (B), or (C), for the period necessary to achieve its purpose, or for ninety days, whichever is less; an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 2521(b)(1)(A), (B), or (C) for the period specified in the certification required in section 2524(a)(7)(F), or for one year, whichever is less. Extensions of an order issued under this chapter may be granted on the same basis as an original order upon an application for an extension made in the same manner as required for an original application and after new findings required by subsection (a) of this section. In connection with applications for extensions where the target is not a foreign power, as defined in section 2521(b)(1)(A), (B), or (C), the judge may require the applicant to submit information, obtained pursuant to the original order or to any previous extensions, as may be necessary to make new findings of probable cause.

"(d) Notwithstanding any other provision of this chapter when the Attorney General reasonably determines that—

"(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained, and

"(2) the factual basis for issuance of an order under this chapter to approve such surveillance exists, he may authorize the emergency employment of electronic surveillance if a judge designated pursuant to section 2523 of this chapter is informed by the Attorney General or his designate at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this chapter is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such acquisition. If the Attorney General authorizes such emergency employment of eectronic surveillance, he shall require that the minimization procedures required by this chapter for the issuance of a judicial order be followed. In the absence of a judicial order approving such electron surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated without an order having been issued, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee or other authority of the United States, a State or political subdivision thereof. A denial of the application made under this subsection may be reviewed as provided in section 2523.

"§ 2526. Use of information

"(a) Information concerning United States persons acquired from an electronic surveillance conducted pursuant to this chapter may be used and disclosed by Federal officers and employees without the consent of the United States person only for purposes specified in section 2521(b)(8)(A)–(F), or for the enforcement of the criminal law if its use outweighs the possible harm to the national security. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

"(b) The minimization procedures required under this chapter shall not preclude the retention and disclosure, for law enforcement purposse, of any information which constitutes evidence of a crime if such disclosure is accompanied by a statement that such evidence, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

"(c) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, or other authority of the United States, any information obtained or derived from an electronic surveillance, the Government shall prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use the information or submit it in evidence notify the court in which the information is to be disclosed or used or, if the information is to be disclosed or used in or before another authority, shall notify a court in the district wherein the information is to be so disclosed or so used that the Government intends to so disclose or so use such information. Whenever any court is so notified, or whenever a motion is made pursuant to § 3504 of this title, or any other statute or rule of the United States to suppress evidence on the grounds that it was obtained or derived from an unlawful electronic surveillance, the court, or where the motion is made before another authority, a court in the same district as the authority, shall notwithstanding any other law, if the Government by affidavit asserts that an adversary hearing would harm the national security or the foreign affairs of the United States,

review *in camera* and *ex parte* the application, order, and so much of the transcript of the surveillance as may be necessary to determine whether the surveillance was authorized and conducted in a manner that did not violate any right afforded by the Constitution and statutes of the United States to the person aggrieved; provided that, in making this determination, the court shall disclose to the aggrieved person portions of the application, order, or transcript only where such disclosure is necessary for an accurate determination of the legality of the surveillance. If the court determines that the electronic surveillance of the person aggrieved was not lawfully authorized or conducted, the court shall in accordance with the requirements of law suppress that information which was obtained or evidence derived unlawfully from the electronic surveillance of the person aggrieved.

"(d) If an emergency employment of the electronic surveillance is authorized under section 2525(d) and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

"(1) the fact of the application;

"(2) the period of the surveillance; and

"(3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

"§ 2527. Report of electronic surveillance

"In April of each year, the Attorney General shall report to the Administrative Office of the United States Courts and shall transmit to Congress with respect to the preceding calendar year—

"(1) the total number of applications made for orders and extensions of orders approving electronic surveillance; and

"(2) the total number of such orders and extensions either granted, modified, or denied.

SEC. 3. The provisions of this Act and the amendment made hereby shall become effective upon enactment: *Provided*, That, any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of chapter 120, title 18, United States Code, if that surveillance is terminated or an order approving that surveillance is obtained under this chapter within ninety days following the designation of the first judge pursuant to section 2523 of chapter 120, title 18, United States Code.

SEC. 4. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(1) is amended—

(1) by inserting "or chapter 120 or with respect to techniques used by law enforcement officers not involving the interception of wire or oral communications as otherwise authorized by a search warrant or order of a court of competent jurisdiction," immediately after "chapter" in the first sentence;

(2) by inserting a comma and "or, under color of law, willfully engages in any other form of electronic surveillance as defined in chapter 120" immediately before the semicolon in paragraph (a);

(3) by inserting "or information obtained under color of law by any other form of electronic surveillance as defined in chapter 120" immediately after "contents of any wire or oral communication" in paragraph (c);

(4) by inserting "or any other form of electronic surveillance, as defined in chapter 120," immediately before "in violation" in paragraph (c);

(5) by inserting "or information obtained under color of law by any other form of electronic surveillance as defined in chapter 120" immediately after "any wire or oral communication" in paragraph (d); and

(6) by inserting "or any other form of electronic surveillance, as defined in chapter 120," immediately before "in violation" in paragraph (d).

(b)(1) Section 2511(2)(a)(i) is amended by inserting the words "or radio communication" after the words "wire communication" and by inserting the words "or otherwise acquire" after the word "intercept."

(2) Section 2511(2)(a)(ii) is amended by inserting the words "or chapter 120" after the second appearance of the word "chapter," and by striking the period at the end thereof and adding the following: "or engage in electronic surveillance, as defined in chapter 120: *Provided, however*, That before the information, facilities, or technical assistance may be provided, the investigative or law enforcement officer shall furnish to the officer, employee, or agent of the carrier either—

"(1) an order signed by the authorizing judge certifying that a court order directing such assistance has been issued; or

"(2) in the case of an emergency interception or electronic surveillance as provided for in section 2518(7) of this chapter or section 2525(d) of chapter 120, a certification under oath by investigative or law enforcement officer that the applicable statutory requirements have been met,

and setting forth the period of time for which the electronic surveillance is authorized and describing the facilities from which the communication is to be acquired. Any violation of this subsection by a communication common carrier or an officer, employee, or agency thereof, shall render the carrier liable for the civil damages provided for in section 2520."

(c)(1) Section 2511(2)(b) is amended by inserting the words "or otherwise engage in electronic surveillance, as defined in chapter 120," after the word "radio."

(2) Section 2511(2)(c) is amended by inserting the words "or engage in electronic surveillance, as defined in chapter 120," after the words "oral communication" and by inserting the words "or such surveillance" after the last word in the paragraph and before the period.

(3) Section 2511(2) is amended by adding at the end of the section the following provisions:

"(e) Notwithstanding any other provision of this title or sections 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance as defined in section 2521(b)(6) of chapter 120 without a court order for the sole purpose of:

"(i) testing the capability of electronic equipment, provided that the test period shall be limited in extent and duration to that necessary to determine the capability of the equipment, that the content of any communication acquired under this paragraph shall be retained and used only for the purpose of determining the capability of such equipment, shall be disclosed only to the persons conducting the test, and shall be destroyed upon completion of the testing, and that the test may exceed ninety days only with the prior approval of the Attorney General; or

(ii) determining the existence and capability of electronic surveillance equipment being used unlawfully, provided that such electronic surveillance shall be limited in extent and duration to that necessary to determine the existence and capability of such equipment, and that any information acquired by such surveillance shall be used only to enforce this chapter or section 605 of the Communications Act of 1934 or to protect information from unlawful electronic surveillance.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934 (47 U.S.C. § 605) shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international communications by a means other than electronic surveillance as defined in section 2521(b)(6) of this title; and the procedures in this chapter and chapter 120 of this title, shall be the exclusive means by which electronic surveillance, as defined in section 2521(b)(6) of chapter 120, and the interception of domestic wire and oral communications may be conducted."

(d) Section 2511(3) is repealed.

(e) Section 2515 is amended by inserting the words "or electronic surveillance, as defined in chapter 120, has been conducted" after the word "intercepted", by inserting the words "or other information obtained from electronic surveillance, as defined in chapter 120," after the second appearance of the word "communication", and by inserting "or chapter 120" after the final appearance of the word "chapter".

(f) Section 2518(1) is amended by inserting the words "under this chapter" after the word "communication".

(g) Section 2518(4) is amended by inserting the words "under this chapter" after both appearances of the words "wire or oral communication".

(h) Section 2518(9) is amended by striking the word "intercepted" and inserting the words "intercepted pursuant to this chapter" after the word "communication".

(i) Section 2519(3) is amended by inserting the words "pursuant to this chapter" after the words "wire or oral communications" and after the words "granted or denied".

(j) Section 2520 is amended by deleting all before subsection (2) and inserting in lieu thereof: "Any person other than a foreign power or an agent of a foreign power as defined in sections 2521(b)(1) and 2521(b)(2)(A) of chapter 120, who has been subject to electronic surveillance, as defined in chapter 120, or whose wire or oral communication has been intercepted, or about whom information has been disclosed or used, in violation of this chapter, shall (1) have a civil cause of action against any person who so acted in violation of this chapter and".

Mr. BAYH. Mr. President, the Foreign Intelligence Surveillance Act of 1977 is being introduced today with the support of the administration. I am sponsoring this bill because I believe that, with some important changes, it will provide essential safeguards for the rights of Americans. It will bring to an end the practice of electronic surveillance without a judicial warrant for foreign intelligence purposes in the United States. It will also protect the rights of Americans in the United States who engage in international communications. It will assert the authority of the Congress to regulate this type of intrusive, covert foreign intelligence surveillance by law; and its standards and procedures will be the exclusive means by which such surveillance may be carried out. As a result, the executive branch can no longer rely on claims of so-called inherent Presidential power to engage in such surveil-

lance. The standards for issuing a judicial warrant attempt to reconcile the interests of personal privacy and national security in a way consistent with the fundamental principles of the fourth amendment and due process of law.

Last year the Judiciary Committee and the Select Committee on Intelligence reported a similar bill, S. 3197, which had the support of Attorney General Edward H. Levi and President Ford. After S. 3197 failed to reach the floor, the Subcommittee on Intelligence and the Rights of Americans, of which I am chairman, continued its study of the issues raised by the bill. During the confirmation hearings for Attorney General Griffin Bell and Director of Central Intelligence Stansfield Turner, I questioned the nominees closely on the possibility of their supporting a new bill with changes designed to resolve some of the misgivings many of us had about S. 3197. Shortly after the new administration took office, a number of areas for improvement were discussed with officials of the Justice Department. The bill introduced today incorporates, at least in part, three significant modifications proposed in those discussions.

First, the most important change is the extension of the bill, and the judicial warrant protection, to intentional targeting of the international communications of American citizens and permanent resident aliens who are in the United States. The effect would be to prevent, by law, such past abuses as the National Security Agency's use of a "watch list" to target the international communications of Americans who were engaged in domestic political dissent and protect activities and posed no serious threat to the security of the country. In the late 1960's and early 1970's, the FBI Intelligence Division and the CIA's "Operation CHAOS" placed the names of hundreds of such Americans on an NSA "watch list" to monitor their political activities, partly to satisfy White House demands for proof that domestic dissent was not foreign-directed. The standards and procedures of this bill will make such abuses clearly unlawful in the future.

Last year's bill did not address this problem. Its protections covered only surveillance of domestic communications, leaving out international communications altogether. As I will discuss more fully later, the new bill does not go far enough because it does not protect Americans who are outside the United States from surveillance by their own Government. Nevertheless, it is a major step forward; and the administration deserves substantial credit for moving in this direction.

A second significant improvement is judicial review of the executive branch "certification," where the target of the surveillance is an American citizen or a permanent resident alien. Under last year's bill, the judge had no authority to reject the "certification" that the surveillance was necessary to obtain foreign intelligence. Under the new bill, before he issues a warrant for surveillance of an American, the judge must not only find probable cause that the person is a foreign agent engaged in activities tied closely to violations of law and that the place or facilities targeted for surveillance are about to be used by the agent, but he must also decide whether the executive branch has properly determined that the information sought from the surveillance is necessary for particular foreign intelligence purposes and that normal investigative techniques are not adequate.

This added safeguard is essential to making the judicial warrant an effective protection for the rights of Americans. However, as with the first improvement, the new provision does not go far enough. The standard for judicial review of the certification—"clearly erroneous"—provides only modest protection. A probable cause standard would be better because the judge should fully understand and approve the reasons for surveillance of an American. The judge should also find that the desired foreign intelligence information is likely to be obtained from the surveillance. The administration is not yet willing to go this far; but its agreement with the basic principle of judicial review of all crucial aspects of the decision to conduct surveillance of an American is a noteworthy advance.

Third, the administration's renunciation of claims of "inherent Presidential power" is a major gain for constitutional government. The new bill states that its standards and procedures are the "exclusive means" by which all electronic surveillance, as defined in the bill, may be conducted. Last year the executive branch insisted upon an exemption for matters that could not "be reasonably said to have been within the contemplation of Congress." In other words, under the provisions of the Ford administration bill, the warrant requirement and the other safeguards could have been disregarded by the executive branch if Congress had not been told about, or had not anticipated some new and more sophisticated surveillance device for acquiring intelligence information. Many of us voted to report a bill containing this provision with the greatest reluctance; the prospect of getting some legislation in this field persuaded us to do so. Nevertheless, elimination of the loophole for "inherent Presidential power" has remained one of our principal objectives.

That loophole is now closed for the use of any electronic surveillance device, as defined very broadly in the bill, within the United States and for the purpose of targeting the international communications of Americans who are in the United States. The Constitution forbids the President from acting upon the basis of a claim of "inherent power" where the Congress has expressly laid down, by law, the standards and procedures for dealing with a particular problem. This was the unmistakable decision of the Supreme Court of the United States in the Steel Seizure case. As Justice Robert Jackson declared in his opinion in that case:

> When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb. . . . *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 637 (1952).

Whatever may be the powers of the President in the absence of specific legislation, there is no doubt that he is bound by the Constitution to conform his action to a law enacted by the Congress. This principle applies equally to the President's domestic powers and to his powers as Commander in Chief and in the area of foreign affairs. The Constitution is clear:

> Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution . . . all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. Article I, section 8, clause 18.

The laws of the United States enacted by the Congress, pursuant to the Constitution, are "the supreme Law of the Land." Article VI, section 2. The President is bound by the Constitution to "take care that" such laws "be faithfully executed." Article II, section 3. Thus, if the President were to authorize surveillance without regard to the standards and procedures of this bill, his conduct would be unconstitutional in the same way that President Truman's seizure of the steel companies was unconstitutional in 1952.

However, even though the loophole is now closed for surveillance within the United States and for targeting international communications of Americans who are in the United States, the bill still leaves room for the President to try to claim inherent power to target Americans abroad for surveillance. The standards and procedures of the bill do not apply to such surveillance, thus leaving Congress in a position of neutrality as to whether and under what conditions an American can be placed under surveillance outside the United States by an agency of the executive branch. Americans should not give up their right to protection against the actions of their own Government when they leave this country. Until there is legislation in this area, the foreign intelligence surveillance activities of the executive branch will continue to raise serious problems for constitutional government and the rights of Americans.

The administration has made a commitment to drafting separate legislation to regulate electronic surveillance of Americans abroad for both foreign intelligence and law enforcement purposes. Therefore, there seems to be no disagreement, in principle, with the aim of eliminating reliance on inherent Presidential powers wherever surveillance is directed against an American. Nevertheless, I believe the new bill might well be an appropriate vehicle for this purpose; and I am considering the introduction of an amendment to extend the protections in the bill to the use of electronic surveillance for acquiring foreign intelligence information by intentionally targeting an American who is outside the United States. Given the commitment made by the administration, I am sure that we can cooperate in the development of legislation that will close the last gap in the framework of legal protection for the rights of Americans in this field.

The three significant improvements in this bill—the movement into the area of international communications, judicial

review of all crucial aspects of the surveillance of Americans, and abandonment of certain "inherent Presidential power" claims—all make major progress beyond where we were last year.

Nonetheless, the question is whether this progress has been achieved at the expense of other features of the earlier bill, which are modified in ways that cut back on the protections developed last year. This was the issue when the Rights of Americans Subcommittee received the administration's first draft of the new bill. It contained a number of changes which did, indeed, substantially weaken important provisions of S. 3197. Since that time, further discussions with the Justice Department have eliminated some of these clauses; but others remain and must be dealt with before the bill is reported to the floor.

The following are some of the problems remedied, in full or in part, in discussions with the Justice Department:

First. The first draft made highly questionable modifications in the so-called "noncriminal standard" for surveillance of U.S. persons. The bill now goes back to the essential elements of the standard adopted by the Intelligence Committee last year.

Any standard allowing surveillance of Americans who are not engaged in illegal activities raises serious problems. Nevertheless, such a standard was adopted last year because Federal criminal laws did not appear to cover certain clandestine activities of foreign agents who are consciously working for an intelligence service or network of a foreign power. As the Intelligence Committee stated in its report on S. 3197, the standard was—

necessary in order to permit the Government to adequately investigate cases such as those where Federal agents have witnessed a series of "meets" or "drops" between a hostile foreign intelligence officer and a citizen who might have access to highly classified or similarly sensitive information; information is being passed, but the Federal agents have been unable to determine precisely what information is being transmitted. (S. Rep. No. 94–1161, p. 22.)

A judge could issue a warrant for surveillance in such cases if he determined that the circumstances indicated harm to the security of the United States.

The administration's first draft made several questionable changes in this standard. It did not require that the agent be transmitting information or material "to an intelligence service or intelligence network of a foreign power." Instead, the transmission could be to anyone. The draft added to the "harm the security" provision another standard—"harmful to the foreign policy of the United States"—which greatly widened the possibilities for surveillance. The standard required only that there "may be" harm, rather than that the harm would occur. Finally, "collection" as well as "transmission" of information of material was covered.

Subsequent discussions with the Justice Department secured the elimination of all these changes, and a return to last year's requirements, except for the addition of "collection." This modification is, however, consistent with the essential elements of the standard. The collection must be undertaken consciously pursuant to the direction of an intelligence service or network of a foreign power; it must be done in a clandestine manner; and the circumstances must indicate that it would harm the security of the United States. It may include, for example, the activities of an agent who serves as a courier or as a conduit for passing information or material from one member of the intelligence network to another.

Nevertheless, the entire concept of a "noncriminal standard" for surveillance of Americans needs careful reexamination, to determine whether amendments to existing criminal statutes might be a better course to follow.

Second. The first draft added to the "criminal standard" for surveillance of U.S. persons the new phrase "activities in furtherance" of illegal clandestine intelligence activities. The bill now deletes this phrase. Last year this matter was handled in report language, which stated that the illegal clandestine intelligence activities were intended to include:

Maintaining a "safe house" for secret meetings, servicing "letter drops" to facilitate covert transmission of instructions or information, recruiting new agents, or infiltrating and exfiltrating agents under deep cover to and from the United States." (S. Rep. 94–1161, p. 20.)

Similar language can be adopted this year.

Third. The first draft made it more difficult for a U.S. person to test the legality of the surveillance in court. The bill now has stronger requirements that the judge disclose information about illegal surveillance to the aggrieved person.

The administration's initial draft stated that, in making a determination of legality in a subsequent legal proceeding, "the court may disclose to the aggrieved person portions of the application, order, or transcript only in compelling circumstances where the harm to national security is outweighed by the requirements of due process in that particular case." Moreover, when the court suppressed information obtained from illegal surveillance, it was not required to inform the aggrieved person of the surveillance.

Some improvements were made as a result of discussions with the Justice Department. The bill now states that "the court shall disclose * * * only where such disclosure is necessary for an accurate determination of the legality of the surveillance." In addition, when the court suppresses information, it must do so "in accordance with the requirements of law" and thereby disclose the illegal surveillance if the law otherwise requires such disclosure.

Although these changes have improved the bill, it does not yet fully insure that Americans can effectively challenge possibly illegal surveillance, or the fruits of such surveillance, used against them in legal proceedings. If there is a reasonable question as to the legality of the surveillance, the judge should make whatever disclosure to the aggrieved person would promote a more accurate determination of such legality. This was the standard in last year's bill.

Fourth. The first draft provided that, where the surveillance is solely to obtain information for the successful conduct of foreign affairs, the Executive must certify that the information is "necessary." The bill now goes back to "essential"; and the meaning will be clarified in the report. Last year the Intelligence Committee report explained that the higher "essential" standard was needed "because of the more amorphous nature of the information which can be acquired" for the conduct of foreign affairs (S. Rept. 94–1161, p. 25). On the other hand, "essential" is not so rigid a standard as to mean totally indispensible or of the ultimate importance for the successful conduct of foreign affairs.

Fifth. The first draft provided that electronic surveillance, as defined in the bill, would require a warrant "under circumstances in which a warrant would be constitutionally required if the surveillance was not foreign intelligence purposes." The bill now reads—"under circumstances in which a warrant would be required for law enforcement purposes because of a reasonable expectation of privacy"—closer to the definition used last year.

Sixth. Under a new, special 1-year warrant procedure for surveillance of certain types of foreign powers, the first draft gave the judge no information about the means of surveillance to be used. The bill now allows the judge to be informed of the type of surveillance to be used, according to the four categories of the definition of electronic surveillance.

The new system of 1-year warrants is complex and will require careful consideration. For a judge to issue such a warrant, he must find probable cause that the target is a certain type of foreign power. The judge must be satisfied that the application by the Attorney General establishes probable cause that the target is a foreign government or component thereof, a faction of a foreign nation not substantially composed of U.S. persons, or an entity which is openly acknowledged by a foreign government to be under its direction and control. The judge can ask for more information before he makes this decision. The special 1-year warrant does not apply to individuals or to foreign-based terrorist groups, foreign-based political organizations, or entities directed and controlled by a foreign government without open acknowledgement.

Under the special warrant, the judge reecives substantially less information about the purposes for and methods used in the surveillance. This may be necessary to satisfy the requirements of tight security for highly sensitive techniques. In any event, the judge will still review and approve the "minimization procedures" designed to limit the acquisition, retention, and dissemination of information about U.S. persons obtained incidentally during the surveillance. Pending further study, these standards appear to be a reasonable accommodation of the competing interests.

Seventh. The first draft provided inadequate protection for foreign visitors in the United States who are not officers or employees of a foreign power. Last year's bill gave them the same protection as American citizens and permanent resident aliens. The first draft allowed them to be placed under surveillance without any finding by the judge that their activities would violate Federal law or harm the security of the United States or that the Executive certification was not "clearly erroneous." The bill now requires a finding by the judge that their activities would harm the security of the United States; and a requirement that the activities be done "knowingly" has been added. Although these are improvements, a return to the principles of last year's bill may be essential if the United States is to be able to assure those who visit our Nation that their fundamental human rights will be fully protected.

These improvements from the administration's first draft bring the bill more closely in line with the essential features of last year's measure. However, we have been unable to resolve all our problems with the standards and procedures. Although they may not be so overwhelming as to delay introduction of the bill in its present form, these issues should be taken up in committee. In some instances, the early introduction of amendments may be necessary in order to identify clearly the weaknesses in the bill as it now stands.

The problems with the lack of protection for Americans abroad, the "noncriminal standard" for surveillance of Americans, disclosure in legal proceedings, and inadequate safeguards for foreign visitors have already been discussed. Additional issues include the following:

First. The procedures for the selection of judges who will issue warrants under the act require further study to determine whether they should serve for fixed terms, rather than indefinitely.

Second. Consideration should be given to allowing private citizens to decline to assist an intelligence agency engaged in electronic surveillance. For example, a landlord might be given the option of refusing to let an FBI agent into an apartment to plant an electronic "bugging" device.

Third. The criminal "clandestine intelligent activities" standard for surveillance of a U.S. person can be interpreted to mean activities protected by the first amendment such as lobbying or influencing public opinion on matters relating to national defense or foreign affairs, if the person fails to comply fully with vague and overly broad provisions of the foreign agents registration laws. Last year this issue was handled in report language rather than in the text of the bill. The legal standard itself should be clarified, instead of relying solely on legislative history.

Fourth. The "minimization procedures" in the bill—and in last year's bill—which set standards for the use of incidentally acquired information about U.S. persons, should be reconsidered in light of the recent experience of the executive branch under guidelines of the Attorney General. This experience may suggest improvements that would more precisely define the proper and improper uses of such information.

Fifth. The Congress must add to the bill detailed reporting requirements for the purpose of ensuring effective oversight by the committee(s) having jurisdiction over U.S. foreign intelligence activities. In the interim before such requirements may be established by law, the Intelligence Committee expects the agencies involved to cooperate with it in instituting such reporting procedures under the provisions of Senate Resolution 400. In addition, the Attorney General has stated that he will not object to the addition of more detailed statutory reporting requirements, under proper security precautions; and he has indicated that the bill does not presently contain such procedures because of his belief that they are better prescribed by Congress than in a bill developed by the executive branch.

On the issues which remain in dispute, we hope the administration bill will remain open to further accommodation. For our part, I am sure the members of the Intelligence Committee will consider carefully the views of the affected agencies, particularly where they may have information and expertise bearing upon foreign intelligence and foreign counterintelligence needs of the United States. As representatives of the American people, we bring to these deliberations a paramount concern for insuring the fullest possible protection for the rights of privacy, which have been infringed for decades because there has not been a clear legal standard for electronic surveillance conducted by our intelligence agencies under the umbrella of the "national security" justification.

Electronic surveillance is a distasteful instrument of Government power. The fear of wiretapping, electronic bugging, and even more sophisticated techniques can inhibit the free and open exchange of ideas. This fear may cause people to stay out of the political process because they are afraid that, if they express criticism of the government, their private lives will be secretly invaded by invisible surveillance technology. This fear is the hallmark of the "closed society," where human rights are forgotten and government power is unchecked.

We have learned in recent years that this fear, has unfortunately, been justified all too often in the United States. Law-abiding Americans who posed no serious danger to the security of the nation were wiretapped, bugged, targeted for the monitoring of their international communications, and placed under surveillance by their own Government when they traveled abroad. The information acquired from this surveillance went into the files of the FBI, the CIA, and other agencies, without adequate consideration of whether or not it was necessary for proper foreign intelligence or counterintelligence purposes. Presidents and Attorneys General of both political parties approved these practices, and sometimes ordered that they be carried out for their own partisan political advantage. In some cases the information was used to harrass or discredit Americans who had violated no law and posed no serious threat to the country—except in the eyes of narrow-minded intelligence officials or Presidents who sought to enhance their own political interests. The reports of the Select Committee on Intelligence Activities, prepared in 1975–76 under the direction of Senator FRANK CHURCH and then-Senator WALTER MONDALE, spelled out these abuses in great detail.

The Foreign Intelligence Surveillance Act of 1977 is intended to prevent these abuses from occurring again, by providing a firm barrier against unjustified surveillance and by instituting outside procedural checks to ensure that the law is obeyed. The administration's willingness to develop such legislation, in cooperation with the Congress, is a sign that the lessons of past abuses have not been forgotten.

This bill is the first step toward full-scale legislative regulation of the intelligence agencies of the United States. Under the mandate of Senate Resolution 400, the Intelligence Committee is drafting further measures not only to clarify the authority and structure of the intelligence community, but also to place clear legal limitations on the entire range of intelligence activities of the CIA, the FBI, and other agencies which may affect the rights of Americans.

The administration's efforts to cooperate with the Intelligence Committee in the area of electronic surveillance legislation give us hope to believe that the same spirit will prevail in our future endeavors. We all now realize, as Attorney General Bell has often stated, that legislative charters are essential for our intelligence agencies to know what the American people expect them to do—and not to do. Neither the intelligence agencies nor every segment of the American people will agree fully with what is proposed as the basis for legislative consideration. The process will be time-consuming because the issues are complex and all interests are difficult to accomodate. But the enterprise is vital for the preservation of constitutional government in the United States.

Mr. MATHIAS. Mr. President, I am pleased to join with my distinguished colleagues, Senators KENNEDY and BAYH and others in introducing The Foreign Intelligence Surveillance Act of 1977.

By sponsoring this bill, I reaffirm my determined support for congressional efforts to provide clear statutory guidelines respecting the electronic surveillance of American citizens in foreign intelligence cases.

More than 3 years ago, on May 2, 1974, I introduced in the 93d Congress, the Bill of Rights Procedures Act, S. 3440. That bill was designed to enforce the protections of the bill of rights by requiring a court order for many types of governmental surveillance—including mail openings, the entry of homes and the inspection of bank, credit and medical records, as well as the use of bugs and wiretaps. Two years ago, on June 5, 1975, I again introduced the Bill of

Rights Procedures Act, this time in the 94th Congress.

And, last year I joined with a bipartisan group of Senators and Representatives in sponsoring S. 3197, the first bill ever supported by a President and Attorney General to require judicial warrants in foreign intelligence cases.

Thus, I was proud to meet this morning at the White House with the President and the Attorney General to express my support, along with other congressional leaders, the concepts expressed in this bill.

More than rhetoric is required to make our Republic work. The founders of our Nation understood the need to place governmental power under law. They knew that power carries with it the seed of abuse, and, in framing the Constitution, they created a unique system of checks and balances designed to frustrate the exercise of arbitrary power. But recent, sad experience proves that even a system as intelligently conceived as ours demands, if it is to work, that we constantly renew our commitment to the principles that lie at its heart. For the past several decades the Congress and the executive branch have abdicated their Constitutional responsibility to establish by law the framework in which Executive power may be discharged. This abdication contributed to many of the abuses of power discovered in the intelligence operations of the Government.

It is not enough to trust in the good intentions of individuals. As Thomas Jefferson, who designed the colonnades which surrounded us in the Rose Garden this morning, said,

> In questions of power, let no more be heard of confidence in man, but bind him down by the chains of the Constitution.

Today, in sponsoring the Foreign Intelligence Surveillance Act of 1977, we are moving to restore our historic constitutional balance. With the passage of this bill, we will forge an important link in those constitutional chains of which Jefferson spoke.

Finally, the bills that I have introduced in this area, and those developed by the Ford and Carter administrations, are often thought of as only protecting American citizens from intelligence abuses. But they an equally important function. They would serve to guide and protect the thousands of dedicated men and women in our intelligence agencies from straying, either unwittingly or by the pressure of circumstance, into unauthorized or illegal activity. This Nation's intelligence officers have dedicated their lives to the service of their country. If we in the Congress can give them clear legal charters and guidelines for their work, we will serve not only the civil rights of Americans, but the best interests of our intelligence officers.

The need for such legislation to protect against the erosion of the fourth amendment of our Constitution is clear. The factual basis for new procedures to regulate the use of bugs and wiretaps against Americans was carefully and comprehensively documented in the final report of the Select Committee on Intelligence. As we stated in the committees final report:

> Since the early 1930's intelligence agencies have frequently wiretapped and bugged American citizens without the benefit of judicial warrant. Recent court decisions have curtailed the use of these techniques against domestic targets. But past subjects of these surveillances have included a United States congressman, a congressional staff member, journalists and newsmen, and numerous individuals and groups who engaged in no criminal activity and who posed no genuine threat to the national security, such as two White House domestic affairs advisors and an anti-Vietnam war protest group. While the prior written approval of the attorney general has been required for all warrantless wiretaps since 1940, the record is replete with instances where this requirement was ignored and the attorney general gave only after-the-fact authorization.

Beginning with President Franklin Roosevelt in 1940, every administration has asserted the right to conduct, and has conducted, warrantless wiretapping and bugging of Americans in national security cases.

President Ford and Attorney General Levi deserve great credit for breaking with this longstanding executive branch tradition by submitting S. 3197 to the Congress last year. President Carter and Attorney General Bell deserve similar credit for fulfilling their pledges and supporting the bill we introduce today.

Without the check provided by the judicial warrant requirement in this bill, national security wiretaps and bugs are subject to grave abuse, as history demonstrates. The report of the select committee and the Senate Judiciary Committee's report accompanying S. 3197 are replete with examples of past abuses which clearly dictate the need to enact this bill into law.

Above all, these examples show that the central problem has been the failure of existing procedures to prevent abuse. As the history of our common law and the provisions of the Constitution teach, procedure is often the surest safeguard against abuse and the use of a judicial warrant requirement is the keystone of the fourth amendment's protections.

The Supreme Court affirmed this in the Keith case where it declared:

> The Fourth amendment contemplates a prior judicial judgment, not the risk that executive discretion may be reasonably exercised. This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of government." (*United States v. United States District Court* 407 U.S. 297 (1972).)

The overriding significance of the Foreign Intelligence Surveillance Act of 1977 is its requirement that an impartial magistrate outside the executive branch and the intelligence community must authorize electronic surveillance in foreign intelligence or national security cases.

At the same time there are certain questions regarding particular provisions of the bill now before us—questions I hope will be carefully scrutinized by the appropriate House and Senate committees. One such question involves the provision in the bill allowing electronic surveillance of an American who is not involved in criminal activity. The Select Committee, in its recommendation No. 52, recommended that a criminal standard obtain for foreign intelligence surveillance, as my bill of rights procedures act provides. The select committee also recognized, however, that current espionage laws do not prohibit certain activity, such as industrial espionage, which the United States has a legitimate counterintelligence interest in monitoring. The select committee recommended that the espionage laws be modernized to include this fairly limited area of currently noncriminal activity.

The Congress should examine the espionage laws to determine if this is feasible wiithout risking too broad or too vague a criminal prohibition. When that is done, the standard of the criminal law can and should be imposed in foreign intelligence surveillance cases.

In moving promptly to enact this bill, Congresss can take an important step toward restoring the balance between the legislative and executive branches contemplated by the Founders. For the past several decades Congress has abdicated its responsibility to establish by law, the framework in which executive power is to be discharged. As the select committee found, this abdication contributed to many of the abuses of power in the intelligence operations of the Government.

Unless this bill is enacted, there will continue to be no statute whatever reulating the executive's conduct in the area of foreign intelligence electronic surveillance. That situation must be corrected. Last year, the Senate in its consideration of S. 3197 built a firm foundation to transform the commands of the fourth amendment into legislative reality and to fill the present legal vacuum. I am confident that the present Congress will complete this task and enact the Foreign Intelligence Surveillance Act of 1977.

Mr. ABOUREZK. Mr. President, I would like to offer some brief remarks today upon the introduction of the Foreign Intelligence Surveillance Act of 1977. This is an extremely important piece of legislation and one which I know has been the subject of extended debate and negotiation between several Members of Congress and the Department of Justice. I have been pleased to have been involved in that process.

First, let me commend Senators KENNEDY, NELSON, BAYH, and the others for their continuing leadership in this area. As long as I have been in the Senate, these men have been in the forefront of the fight to bring electronic surveillance for foreign intelligence purposes under the rule of law. Certainly no further evidence is necessary to point up just how important a goal that is. For, until the Congress enacts legislation to control foreign intelligence surveillance activities, the specter of abuse and misuse will continue to hover over our Government.

I would also like to commend Attorney General Bell and Vice President MONDALE for their efforts in bringing forth this legislation. As we all know, the process of negotiation requires give and take on both sides, and the Attorney General and Vice President have both

provided helpful counsel and guidance in providing the administration's viewpoint on many critical questions in this area.

Now let me turn to a discussion of the bill itself. After carefully reviewing this proposed legislation, I have decided that I cannot cosponsor it in its present form.

This has not been a decision lightly made or quickly arrived at. Rather, it reflects my carefully considered judgment that while there is much that is good in this legislation and while I fully support the purpose of this bill, it also contains a number of provisions with which I disagree so fundamentally that I cannot, in good conscience, add my name to its list of supporters at this time.

Before outlining these objectionable features, let me note briefly those provisions of the bill that I believe are improvements over S. 3197 of last year.

First, this year's bill repeals the "national security disclaimer" contained in 18 U.S.C. 2511(3) and contains no language which relates to any "inherent power" of the President to engage in warrantless surveillance for national security purposes. As many of my colleagues know, the question of a supposed inherent Presidential power in this area has been a subject of contention between the executive and legislative branches of Government for many years. By sending up this bill, I think it is clear that the Carter administration is prepared to lay to rest this anachronistic view of the Constitution. This is an extremely commendable action by the President and one which I wholeheartedly support.

Second, the bill introduced today will cover all electronic surveillance conducted within the United States, as well as the interception of international communications of a targeted U.S. citizen or resident alien who is in the United States. This is a slight broadening of the bill's coverage over last year.

Finally, today's bill offers the issuing judge a limited power of review over the executive branch certification, insofar as it relates to U.S. citizens or resident aliens. While this is clearly an improvement over S. 3197, which allowed no review at all, I am concerned somewhat by the standard contained in this provision. As drafted, the judge is required to accept the allegations in the certification unless they are "clearly erroneous." We will certainly want to hear the Department's explanation of why such a high threshold is necessary, particularly since the review provision applies only to U.S. citizens and resident aliens, who are, presumably, deserving of the greatest degree of protection from unwarranted governmental intrusion.

As to these specific provisions, this bill is an improvement over S. 3197 as reported to the floor last year and I am pleased that the Justice Department would agree to these changes.

I am troubled, however, by a number of other changes which have been made and which can only be viewed as retreats from the provisions of last year's bill.

Foremost among these is the provision which would supposedly allow for the court ordered surveillance of a U.S. citizen who is not engaged in criminal activity. This section, which was objectionable last year, has been broadened further in this year's bill to include not only transmission but collection activities as well. It is principally the inclusion of this provision which keeps me from cosponsoring this legislation.

I will not belabor the point today, because I know that this section will be the subject of intense scrutiny when hearings on this legislation are held. Suffice it to say that I believe there are a number of compelling arguments as to why this provision should be dropped from the bill and I intend to offer such an amendment at the appropriate time.

My chief argument for seeking to drop this "noncriminal standard" from the bill is that, in my view, it is inconsistent with the fourth amendment to the Constitution. I believe that probable cause of a crime is a necessary precondition to the issuance of a warrant for a search of seizure under the fourth amendment. To the extent that this bill would authorize a court order for electronic surveillance against a citizen on a lesser showing, I feel that it does violence to the protections offered by the Constitution.

There is also a secondary reason for seeking to delete this section of the bill. In my view, the activities encompassed in section 2521(b)(2)(B)(iii) may already be criminal under 18 U.S.C. 794 and 18 U.S.C. 798 of our current espionage laws. If this is so, and I expect that the Department of Justice will want to address this question, then there is no reason for the inclusion of this section in the proposed legislation.

Aside from the question of the "noncriminal standard," there are a number of additional provisions in this bill which are unsatisfactory or deserve further study.

I believe that section 2526(c), regarding the procedures by which information acquired from electronic surveillance can be introduced in court or challenged by a criminal defendent is awkwardly drafted and unduly restrictive. This is particularly true insofar as this provision relates to 18 U.S.C. 2518(10) involving criminal wiretaps. I intend to offer an amendment in committee to clarify the confused relationship between these sections and the procedures outlined in them.

The requirements for reporting to Congress on surveillances conducted pursuant to this bill are inadequate. I believe that more information must be provided if Congress is to properly perform its oversight function. At the very least, the reporting requirements contained in S. 3197 ought to be reinstated in this bill.

I am concerned, as well, by the new "testing" provisions contained in this legislation. They seem to me to be overly broad and to reach into areas not properly within this bill's scope.

And it should be noted that this year's version of the bill has dropped the expunging requirement from the statutory minimization procedures. I am not prepared to take a position on this change at this time. Perhaps there are valid reasons why the expunging requirement was unworkable or undesirable. Again, this is a matter which ought to be pursued with the Department at the hearing stage.

Finally, I am troubled by a number of changes in the bill which relate to surveillances targeted against lawful foreign visitors in this country and the uses which will be made of information acquired from them. Others have indicated concern in this regard and I merely wish to add my voice to theirs. While our primary areas of concern have been this bill's protection for U.S. citizens and resident aliens, I do not believe that we should be oblivious to its treatment of foreigners lawfully within the United States. I expect that the Justice Department will be prepared to justify the bill's differing treatment of foreigners and to discuss the constitutional consequences of such distinctions.

Mr. President, let me conclude on this note. I am pleased that the administration has now sent up their proposed electronic surveillance bill. This legislation addresses an important subject and ought to be dealt with as expeditiously as possible. As I have noted, this bill is better in some respects than S. 3197 of last year, but is worse, in my view in a number of other areas. I do not believe, however, that any of these matters represent insurmountable obstacles to the enactment of a fair and workable bill to regulate foreign intelligence electronic surveillance. I look forward to working toward that end.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Foreign Intelligence Surveillance Act of 1977 be referred to the Senate Judiciary Committee, and then to the Senate Select Committee on Intelligence, in that order. It has been cleared with both the committees referred to.

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

By Mr. RIEGLE:

Senate Joint Resolution 55. A joint resolution authorizing and requesting the President to issue a proclamation designating the period from October 9, 1977, through October 15, 1977, as "National School Bus Safety Week"; to the Committee on the Judiciary.

Mr. RIEGLE. Mr. President, today I am introducing a joint resolution declaring that the week of October 9, 1977 through October 15, 1977 be designated as "National School Bus Safety Week."

Since Michigan can claim to be one of the leading States in school bus safety, it seems only appropriate that my colleague from Michigan, Mr. BONIOR and I introduce this resolution in the House and in the Senate.

School bus safety is a concern of both parents and educators because of the increasingly large number of children who travel by school bus. In my State alone, 1 million students are transported by school bus daily. And according to a report by the Department of Transportation, 22 million students are transported daily throughout the United States. With so many children being transported every day, a heightened awareness with respect to the safety of their transportation is an aim hopefully to be achieved through observance of this week.

The taxpayers pay almost $2 billion annually to make a traveling by school bus in the United States seven times safer than by passenger car. Acknowledging "National School Bus Safety