ous Federal and intergovernmental climate activities.

The NOAA office cannot attempt in any way to operate as a "Climate Czar" because the various agencies and departments have perfectly legitimate missions which are impacted in one way or another by climate considerations. Some of these missions involve the development of climate information, while others involve the use of climate information. The purpose of this legislation is to bring together the various climate activities in a programmatic sense to make a stronger whole without organization change. To help accomplish this, the bill provides for: First, a unified budget request—to be prepared by the Office of Management and Budget and to include climate-related budgets from all the agencies; and second, a comprehensive 5-year plan covering all Federal climate activities to be prepared in consultation between all the pertinent agencies. Thus, the role of the program office must be to take actions to coordinate, strengthen, and supplement the various climate activities of the mission agencies. This should in no way result in any jurisdictional disputes between agencies or struggles over agency missions. There is no language anywhere in this bill that would take away from any agency any of its legitimate, traditional missions. Rather, the purpose and the intent is to encourage cooperation between the agencies in climate-related matters.

As a specific example, we do not expect the lead agency, the Department of Commerce, to control all program funding. For example, some program funds will continue to be sought directly by the mission agencies under their existing authorities. Of course, any such budgeted funds would be included in the unified budget of the climate program, and the activities should be included in the 5-year plan. Further, we expect that the Department of Commerce will conduct a planned passthrough program by which, as lead agency, it will support with passthrough funds, certain program activities in the appropriate mission agencies.

Mr. Speaker, I think you can see that we have put a great deal of thought and work into this bill and that it is addressing in a unique way a major national need. For this reason, and for all the reasons enumerated above, I urge adoption of this conference report.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. BROWN of California. I will be happy to yield to the gentleman from Pennsylvania whose participation and support has contributed greatly to the development of this legislation.

Mr. WALKER. Mr. Speaker, I have a question about section 5(e)(1) of the bill, which provides for an advisory committee. I support the idea that the Secretary should seek advice on the conduct of the program from outside the Federal Government, and that she should specifically look to users of climate data, information and services in securing this advice. However, Mr. Speaker, I do have a question about the permissive authority for the Secretary to compensate members of the committee at the daily rate for GS-16 of the general schedule for each day in which they are engaged in the actual performance of their committee duties. I understand that this compensation would be in addition to the travel expenses and per diem in lieu of subsistence. I raise this question in part because similar language was stricken by amendment in the Science Committee and I want to insure that the intention of the House has not been lost on this point. I also raise this question because I believe in general that it is broadly significant to advisory committees throughout Government.

First, I note that the authority given the Secretary is permissive.

Mr. BROWN of California. That is correct. The Secretary is under no obligation to provide this compensation to members of the committee.

Mr. WALKER. Then I take it that this compensation is only to be paid in cases when a particular individual is not able to participate without such pay and when such an individual would stand to lose personal income by participating in committee activities.

In other words, if I understand you correctly, you feel that there are some individuals—or there might be some individuals—who would be only able to participate in this program and participate on the Advisory Committee if the Secretary could provide additional incentive in the form of payment to secure their participation?

Mr. BROWN of California. Yes; that is our intention.

We did consider the position of the House that compensation should not be paid at all. As you remember, the language that was stricken in the Science Committee would have called for mandatory payment of compensation by the Secretary. That would not have been right. However, because we are seeking broad involvement in this advisory committee, specifically the involvement of representatives of users of climate information, we thought that the Secretary should have the authority to make such payments in order to secure participation of people whose advice would make for a stronger program and who would suffer financial hardship in participation without pay.

Mr. WALKER. Mr. Speaker, we have established that the authority is strictly permissive, but I would like to inquire as to the frequency with which you anticipate it will be exercised?

Mr. BROWN of California. I anticipate that this authority will be used infrequently—only in rare and extraordinary circumstances.

I would expect that almost everyone whose advice would be sought on this advisory committee would be able to participate without this compensation. Most would find that their employer would be happy to pay their salary while they were participating on such an important committee. Indeed, some individuals might be willing to participate at their own expense just because of the honor of serving on such a committee. For this reason, I would expect that the authority would be used only in rare and extraordinary circumstances.

Further, I am prepared to send a letter to Secretary Kreps explaining the points that have been made and requesting that she keep us fully and currently informed on this matter. I would specifically request that she inform us whenever some individual declines to serve on the committee because he is not going to be paid for his services. I will include the letter in the RECORD.

Mr. WALKER. Thank you very much, Mr. Speaker.

Mr. BROWN of California. Mr. Speaker, I include the following material:

COMMITTEE ON SCIENCE AND TECHNOLOGY, HOUSE OF REPRESENTATIVES,

Washington, D.C.

Hon. JUANITA KREPS,
Secretary, Department of Commerce, Washington, D.C.

DEAR SECRETARY KREPS: As Chairman of the Subcommittee on the Environment and the Atmosphere I have been deeply involved in the evolution of the Climate Act, H.R. 6669, which has just been reported by a Committee of Conference. As one of the House Conferees on this legislation I want to ensure that there is no confusion as to the Congressional intent of Section 5(e)(1) of the Act.

Included in Section 5(e)(1) is permissive authority for the Secretary of Commerce to provide compensation at the daily rate for GS-16 of the General Schedule for members of the Advisory Committee for each day engaged in the actual performance of their duties. Similar language, which was mandatory in nature, was included in the first draft of this legislation and was removed by the Committee on Science and Technology at the time the Committee considered the bill. That position was later sustained when the bill was passed by the House of Representatives.

It is the intention of the House Conferees that this permissive authority is provided for use only in rare and extraordinary circumstances. We realize that there may be occasions in which the participation of particular individuals may be highly advantageous to achieving the goals of the Act and that these particular individuals would suffer financial hardship if they accepted appointment without compensation. However, we expect that such circumstances would be few and far between.

The Subcommittee on the Environment and the Atmosphere requests that you notify the Chairman and the Ranking Minority Member of any utilization of this permissive authority and the circumstances which justify such use. A number of Members of the Subcommittee have expressed the opinion that they believe that most citizens are willing to contribute their time and talent to national advisory committees and that they consider the public honor of being invited to participate sufficient to compensate them for their time. Therefore, we also request that you provide us with the particulars concerning any prospective member of this advisory committee who indicates that he is unwilling to accept appointment based solely on the lack of daily compensation.

For the Committee I want to express my deep appreciation for your cooperation.

Sincerely,

GEORGE E. BROWN, JR.,
Chairman, Subcommittee on the Environment and the Atmosphere.

Mr. BROWN of California. Mr. Speaker, I have no further requests for time, and I yield back the remainder of my time.

The SPEAKER. The question is on the conference report.

Electronic Surveillance

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROWN of California. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

PROVIDING FOR CORRECTION IN THE ENROLLMENT OF H.R. 6669, NATIONAL CLIMATE PROGRAM

Mr. BROWN of California. Mr. Speaker, I call up the Senate concurrent resolution (S. Con. Res. 103) to correct the enrollment of H.R. 6669 and ask unanimous consent for its immediate consideration.

The Clerk read the Senate concurrent resolution as follows:

S. CON. RES. 103

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 6669), to establish a national climate program, and for other purposes, the Clerk of the House of Representatives shall make the following correction:

In section 5(b)(1), strike "(8)" and insert in lieu thereof "(9)".

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 13471, FINANCIAL INSTITUTIONS REGULATORY ACT OF 1978

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1536) on the resolution (H. Res. 1333) providing for consideration of the bill (H.R. 13471) to strengthen the supervisory authority of Federal agencies which regulate depository institutions, to prohibit interlocking management and director relationships between financial institutions, to amend the Federal Deposit Insurance Act, to restrict conflicts of interest involving officials of financial supervisory agencies, to control the sale of insured financial institutions, to regulate the use of correspondence accounts, to establish a Federal Bank Examination Council, and for other purposes, which was referred to the House Calendar and ordered to be printed.

FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1266 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1266

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7308) 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. After general debate, which shall be confined to the bill and shall continue not to exceed three hours, one and one-half hours to be equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence and one and one-half hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substiute recommended by the Permanent Select Committee on Intelligence now printed in the bill as an original bill for the purpose of amendment, said substitute shall be read for amendment by titles instead of by sections, and all points of order against said substitute for failure to comply with the provisions of clause 5, rule XXI are hereby waived. No amendment to said substitute shall be in order except germane amendments printed in the Congressional Record at least three legislative days before their consideration, pro forma amendments for the purpose of debate, and amendments recommended by the Permanent Select Committee on Intelligence. It shall be in order to consider en bloc amendments to said substitute printed in the Congressional Record of July 17 by Representative McClory of Illinois. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After passage of H.R. 7308, the Committee on the Judiciary shall be discharged from the further consideration of the bill S. 1566; and it shall then be in order in the House to move to strike out all after enacting clause of said Senate bill and insert in lieu thereof the text of H.R. 7308 as passed by the House.

The SPEAKER pro tempore (Mr. BROWN of California). The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), and pending that I yield myself such time as I may consume.

Mr. Speaker, those Members who listened to the reading of the rule will know that this rule provides for 3 hours of general debate, 1½ hours to be equally divided and controlled by the chairman and ranking minority member of the permanent Select Committee on Intelligence and 1½ hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The committee amendment in the nature of a substitute will be read by titles for the purpose of amendment.

The only amendments to be allowed are committee amendments and those amendments which have been printed in the RECORD at least 3 days in advance of their offering. The so-called McClory amendments which appear in the July 17 RECORD may be considered en bloc. A motion to recommit, with or without instructions, is in order, and then the matter will be sent to conference with the Senate bill.

Mr. Speaker, I know there is controversy over the matter that will be brought up by this rule, but I do not have the feeling that there is opposition as such to the rule. Therefore, I reserve the balance of my time.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LATTA asked and was given permission to revise and extend his remarks).

Mr. LATTA. Mr. Speaker, I would like to point out to the House that this is a very, very important piece of legislation, because it deals with foreign intelligence matters, and the security of this Nation might at some time in the future be jeopardized by what we may or may not do here.

As a matter of fact, when the matter was before the Committee on Rules, I raised the question as to whether or not there was any provision in this legislation which would allow the President of the United States to authorize warrantless electronic surveillance during times of war, and I found out that there was not, and that the President would, the way this legislation is written, have to come back to the Congress to have an amendment drafted along those lines.

So thinking into the future, I have discussed the matter with the gentleman from Illinois (Mr. MCCLORY), who has had a considerable amount to do with this legislation and who is to be commended for his efforts, and we have drafted an amendment which I will propose, which would allow the President to authorize warrantless electronic surveillance for periods of up to 1 year during times of war or national emergency. Hopefully, when this matter is being debated under the 5-minute rule, we will see fit to give the President and the Nation this particular safeguard.

Mr. Speaker, this rule provides 3 hours of general debate for the consideration of H.R. 7308, the Foreign Intelligence Surveillance Act of 1978. The time will be equally divided between the Permanent Select Committee on Intelligence and the Committee on the Judiciary.

The rule makes in order an amendment in the nature of a substitute recommended by the Permanent Select Committee on Intelligence. In order to preserve the normal amending process, the substitute is made in order as an original for the purpose of amendment.

Points of order are waived against the substitute for failure to comply with clause 5 of rule XXI, which prohibits appropriations on a legislative bill. The bill provides that funds appropriated for the Department of Justice may be used for the operation of the Special Court and the Special Court of Appeals set up by this legislation. Technically this constitutes an appropriation on legislation, and therefore the waiver is required.

The rule does contain limitations on the offering of amendments. No amend-

ments will be in order except, first, germane amendments printed in the CONGRESSIONAL RECORD at least 3 legislative days before their consideration; second, committee amendments and; third, pro forma amendments for the purpose of debate.

The rule also makes it in order to consider en bloc amendments to be offered by the gentleman from Illinois (Mr. MCCLORY).

Finally in order to expedite a conference, after passage of the House-passed bill, it will be in order to insert the House-passed language in the Senate bill number.

Mr. McCLORY. Mr. Speaker, will the gentleman yield to me?

Mr. LATTA. I am happy to yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise not in opposition to the rule, but only to explain that the rule does limit and does restrict the Members with regard to offering amendments to this extremely controversial and complex legislation. In other words, Members who have not drafted amendments and had them placed in the RECORD and printed for at least 3 days prior to this date are going to be excluded from offering amendments.

To that extent I think this is a very unfair rule. It is not an open rule. It is a rule subject to that kind of limitation and restriction. On this very complex legislation which was brought before the Committee on the Judiciary and the Permanent Select Committee on Intelligence, it seems to me that it is extremely unfair and unfortunate that we have this kind of a situation.

As a matter of fact, one of the reasons why the Committee on the Judiciary did not take up this subject was because members of the Committee on the Judiciary represented that we would not mark up the bill before the committee because we would have an opportunity when the bill came up on the floor of the House of Representatives to mark it up at that time. We heard that same kind of argument when we were in the Permanent Select Committee on Intelligence in the markup stage. The members said that this would all be done by action on the floor.

We are now in a situation where, if we have not already put our amendments in the RECORD and they have not been printed, we are not going to have an opportunity to offer amendments to this bill.

I think it is important for the Members at this stage to realize that the extent of this legislation is very far-reaching. This legislation is unprecedented. It is unprecedented in our entire legislative and judicial history. There has never been an instance of a special court provided which would be able to pass upon the exercise of executive authority with regard to national security or foreign affairs matters.

As a matter of fact, it goes precisely against the constitutional authority which is reposed in the President. If this measure passes, the President will not hereafter be authorized to exercise his Executive authority with respect to securing national security intelligence information. And I am talking now about information. I am not talking about espionage, or anything else. I am talking just about intelligence information gathering. And the President would not be authorized to secure this information unless it is approved by the judge, a member of a special court that is established by this legislation.

This special court itself is unprecedented. The secret hearings are unprecedented. The secret record is unprecedented. This is all part of what is called a very carefully crafted piece of legislation. I think the word "crafted" may be a very apropos word, because it may be craftily put together. In fact, the Members will find that there is a tremendous input here, not only on the part of the Intelligence Committee, the Department of Justice, and others, but a very substantial input insofar as the American Civil Liberties Union is concerned, as far as other agencies are concerned, whose interests are not our national security, but whose interests are entirely something else.

So I think it is well for the Members to have in mind that there is a compromise made with regard to our national security intelligence-gathering capability in this legislation, a compromise made with the ACLU, a compromise made with Morton Halperin, a compromise made with those who are looking out not for the intelligence-gathering capability but who, in many instances, would like to have this capability eliminated entirely. There are a great many who feel that we should have no intelligence capability with regard to clandestine or secret or private investigations or activities. And with regard to those persons, why, of course, this would be entirely satisfactory. But insofar as providing support for our intelligence agencies, the Members will find that all of the former intelligence officers, the entire organization, is opposed to this legislation, and many others who are knowledgeable on the subject. It is legislation which has not been considered at the markup stage by the Committee on the Judiciary, has not come before the full Committee on the Judiciary, although it was assigned and referred to the Committee on the Judiciary, and it has not received the consideration with respect to constitutional issues that are concerned, legal issues that are concerned, or, in my opinion, many of the practical subjects that are concerned with regard to this legislation.

Let me say that the Intelligence Committee did accept one amendment. It accepted one substantial amendment. So in this respect, the measure is substantially different from the measure which was passed over in the Senate. It is not the same bill. When people say that they support the bill that was passed in the Senate by a wide margin, they are not talking about the same bill. This is a different bill. I think this bill should be considered on its own merits, and I think that each and every amendment offered should be considered—and there will be a great many amendments offered.

Mr. BOLAND. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from Massachusetts.

Mr. BOLAND. I thank the gentleman for yielding.

Mr. Speaker, I was wondering whether or not the gentleman from Illinois (Mr. MCCLORY), who has worked long and hard on this bill—as a matter of fact, I would even go so far as to say that this is "Bob McClory Day," because the gentleman has done a good job on the bill—I am wondering whether or not, if we presented the Senate bill, would the gentleman vote for the Senate bill, if we presented the bill here today.

Mr. McCLORY. No. I would say the Senate bill is worse than the bill we have today. We have made a substantial improvement over the Senate bill. We have made many, many additional improvements. I think it is unfortunate, and it must be embarrassing to the other body that passed a bill 95 to 1 that this committee on both sides of the aisle rejected, in the sense that we adopted a substantial amendment in the committee which is now a part of the bill. And I commend the committee for that amendment.

Mr. BOLLING. Mr. Speaker, I yield 5 minutes to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Speaker, I rise in support of H.R. 7308, and particularly I rise to commend my distinguished colleague, the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER was responsible, in my judgment, for the way the distinguished House Committee on the Judiciary, and particularly his Subcommittee on Courts, Civil Liberties, and Administration of Justice, has handled this bill. I am a member of the House Intelligence Committee, as well as the Judiciary Committee, although not a member of Mr. KASTENMEIER's own subcommitee.

Mr. KASTENMEIER was kind enough, however, to allow me to sit in with his subcommittee during the hearings on H.R. 7308. Having sat with his subcommittee and having appeared before it as a witness, I can state with assurance that the 3 days of hearings which Mr. KASTENMEIER's committee held on H.R. 7308 were comprehensive and complete. The subcommittee heard a full range of views in the subject of foreign intelligence surveillance. Also, the subcommittee drew upon past-year hearings and on the extensive record compiled by the House Intelligence Committee.

While some members of the subcommitee had reservations about H.R. 7308, and I think no thoughtful person can have other than some reservations about certain provisions, the subcommittee decided, following careful study, that H.R. 7308 was worthy of being discussed, debated, and voted upon by the full House.

The subcommittee acted in recognition, also, of the little time remaining in this session of the Congress. Further delays awaiting full Judiciary Committee action have led to the demise of the bill.

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Speaker, the gentleman from Kentucky accurately states the situation, and I want to express my thanks to him for making that explanation. We were very pleased to have his testimony and have him sit with the subcommittee, along with our colleague from Illinois (Mr. McCLORY), who was also not only present and testified before my subcommittee, but was able to suggest witnesses for us as we deliberated this question.

Mr. Speaker, again I want to express my appreciation for the gentleman's statements.

Mr. MAZZOLI. Mr. Speaker, let me first say that I think the gentleman from Wisconsin, in his truly modest way, never gives himself full credit. It was a very difficult situation; it was a very difficult parliamentary situation; it was a very difficult tactical situation, and I thought the gentleman handled it with real aplomb and gave full and complete hearings to the matters, and I think he has produced a good bill.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, I just want to acknowledge that there were some hearings, and the gentleman in the well and I did testify. However, I would also like to emphasize that there was no markup session by either the subcommittee or by the full committee; so that this was, in a way, window dressing. This was a concession to me, I guess, because I had requested hearings, but when the subcommittee moved to table and the motion to table succeeded, then in effect the subcommittee decided that the bill would remain in the Judiciary Committee without being considered by that committee.

So, it is not appropriate to bring this bill to the floor with any suggestion or representation that it has received full Judiciary Committee consideration, because it has received none in so far as the markup stage is concerned.

Mr. MAZZOLI. I would like to state to the gentleman, having sat with the subcommittee as I did, and having heard the gentleman himself as a witness, and having heard some of his witnesses testify to the defects as they perceived them in the bill, having listened to the debate and the colloquies that raged in that committee room for 3 days, I would have to say that the committee record which the gentleman has on the table is complete and contains information supporting the gentleman's position that certain changes should be made in the bill.

So, while there may not have been technically the kind of markup that a committee usually conducts where amendments are offered and argued, certain assertions were made during the committee hearing chaired by the gentleman from Wisconsin, which will be referred to by the gentleman from Illinois in support of his position that H.R. 7308 needs to be amended.

Mr. Speaker, the subcommittee's action—and I think this is important to note—the subcommittee that is headed by the gentleman from Wisconsin (Mr. KASTENMEIER), its action on H.R. 7308 in no way waives the Judiciary Committee's right of jurisdiction over foreign intelligence electronic surveillance or any other related subject matters, so, what is done today waives in no way or in no sense preempts the Judiciary Committee from taking action on this type of bill or any other kind of bill in the future.

And while the Judiciary Committee in this instance, Mr. Speaker, graciously agreed to let the full House work its will on this bill, the committee in the years ahead will play a vital and vigorous role in overseeing the provisions of H.R. 7308. I urge therefore that the House pass the bill, a measure to regulate foreign intelligence electronic surveillances, and again let me commend the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. BOLLING. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Illinois (Mr. MURPHY).

(Mr. MURPHY of Illinois asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Illinois. Mr. Speaker, with regard to the rule today, the gentleman from Illinois, my colleague on the committee states that this is an unfair rule. Let me tell my colleagues that this rule was issued on July 12. The gentleman said there was not enough opportunity for amendments to be offered. Let me tell my colleagues there are over 50 pending amendments to this piece of legislation, so anybody who feels he has been short changed has not been reading the RECORD. My colleague, the gentleman from Illinois, has been lobbying almost every Member on both sides of the aisle with regard to this bill and his opposition to this bill. He has had two opportunities before the House Select Committee on Intelligence where he was given every chance to bring witnesses supporting his point of view. He cross-examined every head of every intelligence agency of the United States. He was given the same opportunity, and the same witnesses appeared, before the House Judiciary Committee.

I would like to read to my colleagues today a letter I received from Attorney General Griffin B. Bell:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 6, 1978.

Hon. MORGAN F. MURPHY,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MURPHY: The President today issued the enclosed statement in support of the passage of the Foreign Intelligence Surveillance Act (H.R. 7308). I join the President in his belief that this bipartisan effort of the Executive Branch and Congress will strengthen the capability of our intelligence agencies to deal with foreign espionage and international terrorism while also safeguarding the privacy rights of Americans.

The bill is scheduled for a vote in the House of Representatives this week. The Director of Central Intelligence, the Secretary of Defense, the Director of NSA and the Director of the FBI join me in strongly supporting this legislation.

Yours sincerely,

GRIFFIN B. BELL,
Attorney General.

Mr. Speaker, I would like also to read the President's message, issued today:

STATEMENT BY THE PRESIDENT

The House of Representatives is scheduled to vote this week on the Foreign Intelligence Surveillance Act, one of the most significant legislative initiatives involving our intelligence agencies in the last three decades.

This Act will establish the nation's first legislative controls over foreign intelligence surveillance conducted by the United States Government. Most importantly, those controls will be established so as to protect both the strength of our nation's intelligence agencies and the privacy rights of our citizens.

American citizens will be assured that the intelligence agencies so vital to protecting our security will be able to perform their tasks fully and effectively. The bill also assures intelligence officers who serve our country that their proper activities in this field will be authorized by statute.

By providing clear statutory standards, this legislation will help strengthen the ability of our intelligence agencies to deal with foreign espionage and international terrorism. The strong support of this legislation by every intelligence agency clearly reflects this fact.

The passage of this legislation is also a major step toward eliminating the potential for abuse of electronic surveillance by the Federal Government. Americans will now be afforded the safeguards of a judicial warrant procedure for any electronic surveillance which might affect their rights.

This legislation has been carefully developed over several years, by Executive and Congressional leaders of both parties. The kind of bipartisan cooperation needed to develop legislation in the intelligence area, which is so important to the defense of our nation, was demonstrated earlier this year by the overwhelming Senate vote, 95–1, passing the bill.

I urge the Members of the House to vote for passage of this legislation, so that we can promptly begin to implement this well-balanced, long-overdue initiative.

Mr. Speaker, I urge my colleagues to vote for the passage of this rule.

Mr. LATTA. Mr. Speaker, I yield 5 minutes to the gentleman from Arizona (Mr. RUDD).

(Mr. RUDD asked and was given permission to revise and extend his remarks.)

Mr. RUDD. Mr. Speaker, as a Member of this body who served for 20 years as a special agent for the Federal Bureau of Investigation, with many years in the area of foreign intelligence, I will tell you that this proposed legislation is fatally flawed.

It will have the effect of seriously weakening any effective intelligence-gathering capability by our Government.

Such effective intelligence-gathering is entirely dependent upon speed and confidentiality of sensitive sources. Both of these factors would be severely compromised by the warrant provisions, and the involvement of the judicial branch, in the area of authorizing electronic surveillance.

First, let me say that legislation just because it contains a warrant provision will not provide a special shield against prosecution for the loyal FBI agent or other Government official who is instructed to conduct electronic surveillance.

Any law which would guarantee immunity from criminal prosecution or

civil suit to a government officer or employee conducting such surveillance authorized by the Attorney General would provide such a shield.

In fact, the warrant provision will destroy the FBI's ability to collect intelligence on the movement and plans of known terrorists in an emergency situaiton, as one major example of this bill's defects.

As a result of the Kearney case, and the current indictment of three other major FBI officials who were involved in the surveillance of people under authority of the Attorney General, in order to locate and apprehend fugitive members of the Weather Underground terrorist organization, a chilling effect has already been imposed upon the legitimate intelligence function of the FBI and other agencies.

The destructive nature of the Kearney case and what has followed will be severely compounded if a warrant requirement is imposed for foreign intelligence purposes that do not necessarily involve an American person in a crime.

Here we have a situation where the current administration has set a precedent that loyal FBI subordinates may be prosecuted and, if convicted, imprisoned for carrying out instructions of their superiors, authorized by the Attorney General and even the President himself, if those instructions are later considered to be wrong.

So what happens in an emergency situation under this bill, if the FBI is informed by border officials at the Canada-Vermont border that a suspected member of the German terrorist Baader-Meinhof Gang has just passed into the United States? Such a circumstance occurred just last month.

There is no firm evidence that the foreign citizen, who has a passport and a visa is a member of this terrorist group. But the possibility is strong, and some very valuable intelligence information could be gained by having this person followed and electronically surveilled at any stopping point, even including the home of some collaborator or contact within the United States along the way.

In this situation, time is of the essence. Even minutes lost could mean that a dangerous terrorist would be on the loose among our own people, and that valuable intelligence about that person's objectives or domestic contacts and sources of support would remain unknown to our Government.

Under this proposed legislation, what do our intelligence officials—what does the FBI do?

Right now, there is no question about what would be done. The Attorney General would be alerted. He could instruct the FBI to follow the individual and to conduct electronic and other surveillance at every possible point, in order to collect intelligence that is essential to the Government for the protection of our people.

If any criminal activity is indicated, a warrant would be sought for further authority to collect evidence by electronic surveillance and other means.

But under this bill, before any criminal activity is evidenced and an investigation for that purpose can be started, nothing could be done to collect vital intelligence information, maybe leading to prevention of harm to the public.

The warrant provision for foreign intelligence purposes is the reason that nothing would probably be done in the precious-few minutes and hours at the outset, when the most valuable intelligence could be obtained.

Yes, there is a supposed 24-hour emergency grace period under this bill, where electronic surveillance can be conducted while a warrant is being sought for such surveillance.

But what FBI special agent will be willing to conduct this surveillance during the 24-hour period without a warrant, once a warrant is required, under the risk that the judge may not approve the warrant?

Under the Kearney precedent, the loyal FBI agent would be out on the end of the proverbial tree limb, after the judge has sawed it off.

The good information and good judgment of this FBI agent's superiors, and even the Attorney General himself, will not save the FBI subordinate from the spector of prosecution in such a case—and most certainly from the probability of civil suit if the parties involved become aware of what has happened, which they will under this bill.

And so this bill—despite its supposed 24-hour warrantless foreign intelligence electronic surveillance—will prevent the possibility that any FBI agent or other official can prudently, in his own best interests, conduct such surveillance and remain protected from later possible recriminations.

For the public, this means that hundreds, maybe thousands of situations such as the one involving alleged members of the terrorist Baader-Meinhof Gang coming into the United States to meet up with comrades in the United States will go by the boards in their initial stages, where the most valuable intelligence work against foreign threats must be done.

Let us make no mistake about the time that will be lost in such a situation. Under current procedures, top-level authority for electronic surveillance within the executive branch must already be obtained.

This includes authority from the Attorney General himself and maybe at the Presidential level as well, which can be obtained immediately.

Under this bill, in addition to these procedures, a Federal judge must give his approval. This will involve additional administrative preparation, time lost locating and appearing before the judge and in obtaining his decision. Here we are only talking about the problems confronting our intelligence community in an emergency situation. This does not even consider the serious mistake of involving the judicial branch in the executive's foreign intelligence gathering function in the first place.

Mr. Speaker, under this bill a warrant would be required to conduct wiretaps to collect foreign intelligence in every instance. Even surveillance of the Soviet and other Communist government embassies would require a warrant.

It is inevitable that American citizens and resident aliens will call such embassies. Even with minimization procedures required by this bill, such surveillance to determine domestic contacts and supporters of Communist government goals and activities in the United States would require a warrant. And under the Freedom of Information Act and through other means, this information provided to the court to obtain necessary warrants would inevitably wind up in the hand of the wrong people.

Take the case of Orlando Letelier, who was Chile's ambassador to the United States during the Marxist regime of Salvadore Allende. Letelier made contacts and friends among leftists in our own country—even in the Congress. Letelier was a close friend and comrade of Fidel Castro and his allies.

When the Allende regime ended, Letelier sought and obtained asylum in the United States and worked full-time until his death in pro-Communist causes in our country.

Evidence obtained from his briefcase when he died showed that Letelier was receiving financial support from the Castro government through Allende's daughter, who was living in Cuba. This evidence also showed that Letelier used these funds to pay for his lobbying and intelligence gathering activities in the United States. He developed extensive contacts with U.S. Government and congressional officials.

Under this bill, in order for our intelligence officials to follow up on such evidence, and to inform the President and other Government officials of the relationship and support between American citizens and hostile foreign governments, judicial warrants will be required.

Sensitive information such as that I have described involving Letelier and highly placed officials will then, by law, be required to be made part of the court record.

These records, either legally under the Freedom of Information Act, or through litigation, or as the result of leaks to the news media and other illegal methods, will inevitably be publicized and compromised through disclosure.

The only way to prevent disclosure of sensitive intelligence information is to severely restrict access to it. Under this bill, it will be required that such sensitive information and documentation be turned over to a special new court—maybe two courts—involving 17 judges, their clerks, reporters, bailiffs, and so forth. It is inevitable that our most sensitive, highly classified, and explosive intelligence information will be compromised and disclosed publicly under such an unreasonable arrangement.

If for no other reason than the highly important news value of such court files to our energetic, probing news media, who of necessity are always digging for the best story, this intelligence information will be perpetual game for leaking and publication.

We cannot afford to allow such a thing to happen. We cannot allow a law to be passed that will destroy the speed, the sureness, and the confidentiality of our intelligence gathering capability

that is so essential to the President's responsibility as our Commander in Chief and top foreign policy officer.

I implore my colleagues to defeat H.R. 7308. If legislation is needed in this area, the McClory substitute is certainly the only prudent way to accomplish that objective.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. MURPHY of Illinois. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7308) 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.

The SPEAKER pro tempore (Mr. BROWN of California). The question is on the motion offered by the gentleman from Illinois (Mr. MURPHY).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 7308, with Mr. YATES in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Illinois (Mr. MURPHY) will be recognized for 45 minutes, the gentleman from Illinois (Mr. MCCLORY) will be recognized for 45 minutes, the gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 45 minutes, and the gentleman from Virgina (Mr. BUTLER) will be recognized for 45 minutes.

The Chair now recognizes the gentleman from Illinois (Mr. MURPHY).

Mr. MURPHY of Illinois. Mr. Chairman, I yield myself such time as I may consume.

(Mr. MURPHY of Illinois asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Illinois. Mr. Chairman, H.R. 7308, as reported by the permanent Select Committee on Intelligence, is the culmination of over 4 years of detailed inquiry by two administrations and six congressional committees into the unique area of foreign intelligence electronic surveillance. It has, with its predecessor from the Ford administration been the subject of hearings on seven different occasions over 3 years, and of five different markups and five committee reports.

This inquiry was conducted against the backdrop of both the abuses revealed by the Church and Pike committees and the recognition that an efficient intelligence collection capability is vital to the national interest.

Two basic conclusions have been reached:

First. Electronic surveillance is a necessary and proper means of collecting foreign intelligence information; and

Second. The rights of our citizens can best be protected by requiring a judicial warrant for such surveillance undertaken in the United States.

H.R. 7308 is based on these conclusions and will insure that both legitimate intelligence activities and the privacy interests of our people are furthered. H.R. 7308, as amended, would enact a new law entitled the "Foreign Intelligence Surveillance Act of 1978." The purpose of the bill is to provide a statutory procedure authorizing the use of electronic surveillance in the United States for foreign intelligence purposes. The procedures in the bill would be the exclusive means by which electronic surveillance, as defined, could be used for foreign intelligence purposes. The following techniques of electronic surveillance would fall within the bill's prescriptions:

First. The acquisition of a wire or radio communication sent to or from the United States by intentionally targeting a known United States person in the United States under circumstances in which the person has a reasonable expectation of privacy and a warrent would be required for law enforcement purposes;

Second. A wiretap in the United States to intercept a wire communication, such as a telephone or telegram communication;

Third. The acquisition of private radio transmissions where all of the communicants are located within the United States; or

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

H.R. 7308, as amended, creates a special court in Washington, D.C., composed of at least one judge designated by the Chief Justice from each of the judicial circuits and a special court of appeals composed of six judges designated by the Chief Justice from the greater Washington, D.C. area.

The bill would require a prior judicial warrant for all electronic surveillance for foreign intelligence purposes with three limited exceptions. First, where certain types of electronic surveillance are targeted against certain types of foreign powers, under circumstances where it is extremely unlikely that a United States person's communication would be intercepted, no warrant is required. Instead, Attorney General approval is required. Parenthetically, I would note that this exception to the warrant requirement was suggested by my colleague from Illinois (Mr. MCCLORY). It was agreed to by the Intelligence Committee in a spirit of compromise. I and a majority of my colleagues on the committee made a good faith effort to obtain the support of the gentleman for the bill. Obviously, we have not succeeded.

Second, emergency surveillance without a warrant would be permitted in limited circumstances, but a warrant would have to be obtained within 24 hours of the initiation of the surveillance.

Third, surveillance solely for the purposes of testing equipment, training personnel, or "sweeps" to discover unlawful electronic surveillance are authorized without a warrant under rigorous controls to insure that no information concerning United States persons is improperly used, retained, or disseminated.

The bill would authorize the Attorney General to make applications to the special court for a court order approving the use of electronic surveillance. Approval of an application under the bill would require a finding by a judge that the target of the surveillance is either a "foreign power" or an "agent of a foreign power," terms defined in the bill, and that the facilities or places at which the surveillance is directed are being used or are about to be used by a foreign power or agent of a foreign power. Where official foreign powers are the target of a surveillance, the standards for obtaining a warrant are less strict than for other surveillances, and both the amount of information provided the judge and the findings he must make are reduced.

A "foreign power" may include a foreign government, a faction of a foreign government, a group engaged in international terrorism, a foreign-based political organization, or an entity directed and controlled by a foreign government or governments. An "agent of a foreign power" includes nonresident aliens who act in the United States as officers, members, or employees of foreign powers or who act on behalf of foreign powers which engage in clandestine intelligence activities in the United States contrary to the interests of this country. U.S. persons meet the "agent of a foreign power" criteria if they engage in certain activities on behalf of a foreign power which involve or may involve criminal acts.

The court would also be required to find that procedures proposed in the application adequately minimize the acquisition, retention, and dissemination of information concerning U.S. persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information.

Every application for an order must contain a certification or certifications made 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 with responsibilities for national security or defense who are appointed by the President with the advice and consent of the Senate. Those officials would be required to certify that any information sought by the surveillance relates to, and if concerning a U.S. person is necessary to, the national defense or the conduct of foreign affairs of the United States or the ability of the United States to protect against grave hostile acts or the terrorist, sabotage, or clandestine intelligence activities of a foreign power. The court would be required to review each certification for surveillance of a U.S. person and to determine that the certification is not clearly erroneous.

The court could approve electronic

surveillance for foreign intelligence purposes for a period of 90 days or, in the case of surveillance of a foreign government, faction, or entity openly controlled by a foreign government, for a period of up to 1 year. Any extension of the surveillance beyond that period would require a reapplication to the court and new findings as required for the original order.

H.R. 7308 requires annual reports to the Administrative Office of the U.S. Courts and to the Congress of statistics regarding applications and orders for electronic surveillance. The Attorney General is also required, on a semiannual basis, to inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence fully concerning all electronic surveillance under the bill; and nothing in the bill restricts the authority of those committees to obtain further information related to their congressional oversight responsibilities.

This, admittedly, is a short outline of a very complex and detailed piece of legislation. Its very complexity, however, is evidence of the attention the Intelligence Committee has given to the important national security and civil liberties issues involved.

As introduced, H.R. 7308 was fully supported by the administration and, to a lesser extent, supported by the intelligence community. The bill was opposed by civil liberties groups. The Intelligence Committee worked hard on the bill, involving in discussion both civil liberties groups and officials of the intelligence community. The result is a better bill from the perspectives of both civil libertarians and intelligence officials. It is a good bill, albeit a very complex and confusing one, because it assures that the abuses of the past cannot be repeated, while at the same time preserving, and in certain respects, improving, the necessary collection of foreign intelligence important to this Nation's security.

This is not to say that it is a bill about which reasonable men and women may not differ. Some believe on the basis of moral principle that electronic surveillance simply is wrong and can never be justified, except perhaps if it were essential to the continued existence of our country. Others believe, again on the basis of moral principle, that judges should never be involved in the approval process for foreign intelligence electronic surveillances. Obviously, the bill is not responsive to either of these positions.

Rather, the majority of the House Intelligence Committee was convinced on the one hand that the electronic surveillances which would be regulated by H.R. 7308 can be, and often are, important to the national security. On the other hand, the majority of the committee was equally convinced that these important surveillances could be conducted in a manner which would fully protect the legitimate privacy rights of Americans. The bill as reported by the committee, I believe, authorizes and facilitates those important surveillances, while protecting the rights of those involved, and prohibits those illegitimate surveillances which were the abuses of the past.

A red, white, and blue herring that has been raised is a so-called threat to the national security. No intelligence community witness before the House Intelligence Committee suggested that H.R. 7308, as introduced or as reported, threatened the national security. No intelligence community witness has expressed any reservation about the bill, as reported, impeding legitimate intelligence collection. No intelligence community witness suggested that the bill's procedures would threaten whatever speed is necessary for foreign intelligence surveillances. Only two witnesses expressed a reservation concerning risks of disclosure with respect to the bill as introduced. Those witnesses were Admiral Murphy of the Defense Department and Admiral Inman of NSA. Today, both Admirals Murphy and Inman support H.R. 7308, as reported, without reservation.

It is alleged that reams of classified material will be given to large numbers of judges and court personnel. This is nonsense. An application is made to one judge, not many, and the bill explicitly allows for executive branch personnel to serve as any necessary court support.

Another herring that is dragged across the trail is that judges are unequipped to make subtle political and operational decisions necessary in the foreign intelligence field. The bill recognizes this fact full well and does not allow judges to make such decisions. Much of the bill's complexity arises from the need to specify exactly what the judges' duties and powers are under the bill. Those duties and powers are of the same nature as currently exercised under the law regulating law enforcement surveillances; that is, applying facts to a statutory standard.

The vehicle that keeps judges from second-guessing the executive's political judgments is the certification which must accompany each application for a warrant. That certification must be signed by a high executive branch official with responsibility for intelligence or foreign affairs matters. It will contain statements by that official that the object and the purpose of the surveillance is to obtain a particular type of "foreign intelligence" as defined, that this foreign intelligence cannot be otherwise obtained and it will provide the basis for the official's belief that such information will result from the surveillance. Such a certification can only be questioned if these statements are clearly erroneous on their face.

The so-called "criminal standard" is also a herring to the extent that anyone suggests that it will impede legitimate intelligence collection. The presence of the criminal standard does not mean that the purpose of the surveillance is prosecution, or only to gather evidence of a crime, and there is certainly no limitation in the bill that would so restrict such surveillances. Nor was the so-called criminal standard adopted because of any belief that the Constitution required it. Rather, it was adopted as a matter of policy and principle, that this Government should not target electronic surveillance against individual Americans absent probable cause to believe that they at least may be involved in a violation of law. If this principle had any negative impact on the collection of necessary intelligence, a debate over this criminal standard might be called for, but the Director of the FBI has indicated in the strongest possible terms that the criminal standard in H.R. 7308, as reported, will not impede the FBI's intelligence collection by means of electronic surveillance.

Finally, it has been suggested that congressional oversight is a more proper check on the executive than a judicial warrant. But, it is clear to me at least that congressional committees are simply not equipped to conduct oversight of the day-to-day operation of electronic surveillance, and it is also clear to me that the executive will not provide us the information to do the job even if we were in a position to do it. Such uncertain, after-the-fact oversight is no substitute for prior approval of these surveillances.

The benefits of H.R. 7308, as reported, and its improvements over current practice both from national security and civil liberty viewpoints are substantial.

It is not a bill designed to punish the intelligence community.

It is not a bill that was hastily written in response to media pressure.

And, it is not a bill that will hamstring the intelligence agencies now or in the future.

Rather, it is a much needed piece of legislation that will remove the existing uncertainties as to what are proper intelligence activities while protecting the rights of our citizens.

It will enable the dedicated and patriotic men and women of our intelligence agencies to go about their important business secure in the knowledge that their endeavors are supported by the Congress and the people and that their actions will not subject them to public scorn and ridicule. * * *.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. I thank the gentleman for yielding, and I want to commend him, and particularly, the chairman of the full committee, the gentleman from Massachusetts. (Mr. BOLAND), and the entire Intelligence Committee for the work they have done on H.R. 7308.

I know, from having grappled with this vexatious issue in my own committee, how difficult it is. One of the difficulties in the bill, perhaps not a major one, but nonetheless one I would like to ask the gentleman from Illinois about, is as follows:

I notice that the directive language contained in section 102(a)(3)(A) and in section 105(b)(2)(B) of H.R. 7308 provides that common carriers shall furnish information, facilities or technical assistance necessary to accomplish the electronic surveillance, and here are the important words, "in such a manner as will protect its secrecy". That language is different from the directive language of title III of the Omnibus Crime Control Act of 1968 where common carriers

are required to provide information, facilities and technical assistance "necessary to accomplish interception unobtrusively". My question is this, what is the difference between "in such a manner as will protect its secrecy" and "unobtrusively" in the two statutes? Is it the intent of the drafters of the language that the Government is authorized to request different or more information, facilities or technical assistance under H.R. 7308 than is authorized under title III and if such is intended, what is the nature of that additional or different cooperation which may be required?

Mr. MURPHY of Illinois. Let me say to the gentleman that he is correct in that a court order or an Attorney General's order obtained under this bill may direct an officer, employee, or agent of a communications common carrier to provide certain assistance to Government agents implementing those orders.

The nature and scope of such assistance is intended to be identical to that which is authorized by section 2518(4)(e) of chapter 119 of title 18 of United States Code, commonly referred to as title III of the Omnibus Crime Control Act of 1968, as amended. The reason that the language of H.R. 7308 in the sections to which the gentleman refers is different than the language of title III is because the drafters and the committee wished to make very clear that these electronic surveillances which seek to collect foreign intelligence information in this country are extremely sensitive in nature and must be protected from disclosure in the strictest possible fashion.

These electronic surveillances are different from wiretaps authorized by title III where the law requires that notice eventually be given to the subjects of those wiretaps. H.R. 7308 makes clear that no notice will be given the subjects of electronic surveillance as defined under the bill because of the important national security interests to be protected. Accordingly, the language of the statute reads "in such a manner as will protect its secrecy."

This does not seek to authorize in some indirect fashion a different kind of cooperation than is currently authorized to be requested under title III, but simply to create a statutory obligation to keep such surveillances as secure from disclosure as is humanly possible.

In other words, if an application is made to the special court and an order is issued approving the application, and the surveillance is then undertaken, the agents in the field go out to the common carrier and ask for their cooperation, and that common carrier, as it would have to under title III of the Omnibus Crime Control and Safe Streets Act, might, if asked, notify the subject of the surveillance that his wire is being tapped.

To protect the secrecy of these surveillances, we are not requiring that. The reason for that is simple. It is because if we went out and told a Russian spy that the FBI's Counter ntelligence Division, which conducts these surveillances for our national security, was tapping his wire, I do not have to tell the gentleman what would happen. Whatever system that spy was using, he would adopt a different method or he would leave the country, leave the jurisdiction. That is the reason for it.

Mr. KASTENMEIER. I thank my colleague for his explanation.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding to me.

Mr. Chairman, I just want to say that I commend the gentleman for his administration of our subcommittee, and I do not have any complaints as far as the opportunity to present evidence there is concerned. The evidence presented by a former deputy attorney, Laurence Silberman, I thought was rather persuasive, and we had other testimony as well.

However, the gentleman states that Admiral Inman, who originally objected to the bill, now no longer has any objection. I understand that we have exempted his operation from the coverage of this legislation.

However, Admiral Murphy—no relation to the gentleman in the well—who testified, I think, in January of this year before our committee, said that there was a very high risk and very limited benefit for the rights of Americans were we to require a warrant with regard to the targeting of foreign agents and foreign powers.

What if anything did we do in this bill in order to get him to change his mind about this legislation?

Mr. MURPHY of Illinois. I think it was the gentleman's amendment, the amendment offered by the gentleman from Illinois (Mr. McCLORY), which satisfied both Admiral Inman and Admiral Murphy. As the gentleman will recall, there were members of the committee who objected to his amendment, but as chairman of the Subcommittee on Legislation I supported his amendment, as did Mr. BOLAND, chairman of the full committee, and other Democrats.

In a spirit of cooperation I thought we would be able to bring this bill to the floor, as the Senate did, in a bipartisan manner. The Senate passed it by a vote of 95 to 1. Senators on both sides of the political continuum, both political philosophies—I will not mention their names because we are not supposed to do that—but both spectrums were covered fully, and they passed this bill in an hour after years of debates and hearings.

I thought when the gentleman offered his amendment and we adopted it, then we would come to the floor to our colleagues with the same bipartisan effort.

Admiral Inman and Admiral Murphy both have written me, and say that not only do they support the legislation, but I am sure they would not have used the words "enthusiastically support it" if they had any qualms at all. Admiral Inman, as the gentleman knows, has called Members of Congress asking them to pass this legislation. He is the man in charge of probably the most sensitive of all the operations taking place today in the area of electronic surveillance.

Mr. McCLORY. If the gentleman will yield further, I can understand Admiral Inman's enthusiasm because we have eliminated, we have exempted, his operation from the scope of this legislation. But, I question that we have done anything with respect to Admiral Murphy. I do not think we have affected his operations in any way.

Mr. MURPHY of Illinois. We have exempted Admiral Inman in one specific operation that we are prohibited from talking about in public, and the gentleman is fully aware of it, but it is not his whole operation.

Every operation of the NSA which falls under the definition of electronic surveillance, as defined in the bill, is covered by the bill.

It was suggested to the committee in the testimony of representatives from the Department of Defense and from the National Security Agency that some very sensitive activities need not require a judicial warrant under the bill, because they would not involve the interception of communications of U.S. persons.

The committee considered this approach very carefully and eventually agreed to an amendment offered by the gentleman from Illinois (Mr. McCLORY) the effect of which was to exempt from the warrant requirement, but not from the other provisions of the bill, and certainly not from Attorney General approval, those operations which would by definition not involve U.S. persons.

Members will understand why I am reluctant to discuss the particulars of the very sensitive surveillances that are involved.

However, it certainly can be said that those operations which constitute electronic surveillance but which are handled under section 102(a) of the bill, that section which permits Attorney General authorization of these particular surveillances are of a segregable class about which it can be said with certainty that U.S. persons will not be intercepted.

The committee felt that adopting the amendment offered by the gentleman from Illinois did no violence to the principles which underlie H.R. 7308.

It was felt that this legislation was introduced and has received the support that it has because it did not attempt to in any way dismember or destroy intelligence operations.

However, it does attempt, and I think does a very good job at it, to protect U.S. persons whenever they become inadvertently involved in electronic surveillances in this country that seek to collect foreign intelligence information.

Therefore, the different treatment provided under the bill for surveillances which do not involve U.S. persons is attuned to the fundamental principle of the legislation to protect innocent U.S. persons.

The committee found a happy marriage between security concerns and protection of U.S. persons and stands by its judgment in adopting that amendment.

This is not to say, however, that the NSA is in any way exempt from this bill.

NSA operations remain covered by its provisions, although different treatment may be given to different types of operations.

This, however, is fully consistent with the legitimate interests which have driven the drafting and consideration of this legislation in its present form.

Mr. McCLORY. If the gentleman will yield for this further comment, I do not want there to be any misunderstanding as far as the amendment I offered in the committee. The amendment I proposed to offer in the committee, would have been an amendment which would, if accepted, have provided an opportunity to bring this measure to the floor under an agreement. That amendment would have exempted from the warrant requirements all foreign powers and agents. I do not believe we should be required to have a judicial warrant to have electronic surveillance over foreign powers and agents.

Mr. MURPHY of Illinois. The gentleman is aware that if a U.S. citizen calls an embassy and requests information about some foreign event in the United States, that his conversation will not be used politically against him. The Church committee and the Pike committee uncovered clear evidence that past Executive practices have intercepted Americans' conversations with foreign embassies, which have been disclosed and used politically against these citizens.

Mr. McCLORY. If the gentleman will yield further, that is the purpose of the minimization procedure which I would offer.

Mr. MURPHY of Illinois. The minimization procedures would not have come into being had there been warrant procedures; and they would not have been abused as they have been in the past had there been a warrant procedure.

Mr. McCLORY. Mr. Chairman, I yield 7 minutes to the ranking minority member of the Intelligence Committee, the gentleman from California (Mr. BOB WILSON).

Mr. BOB WILSON. Mr. Chairman, the permanent Select Committee on Intelligence has the responsibility to carry out the mandate of the House expressed in House Resolution 658. This responsibility is particularly heavy at this time, as the committee brings to the House the first substantive policy bill to emerge from our examination of the intelligence community. This bill—the Foreign Intelligence Surveillance Act of 1978—will, in whatever form it takes, impact our intelligence organizations now and in the future with respect to their ability to further the national security interests of this country and its citizenry.

The work of this committee, and particularly the Subcommittee on Legislation, has been difficult. We are dealing in a complex matter, with very sensitive subjects. The issues have centered on the balance between our country's national security requirements, and the individual rights and liberties of our citizens. Our hearings, the testimony we have received, and the debates which have occurred in committee, have not provided clear, unequivocal guidelines upon which we could all agree. Throughout this long and difficult period, the committee chairman, the distinguished gentleman from Massachusetts (Mr. BOLAND) has guided our efforts to ensure this most serious matter was not examined as a partisan issue, nor an issue between liberals and conservatives, but rather as an important matter of genuine, general concern. I would especially like to express my warmest appreciation for his even-handed and fair treatment of controversial areas and issues, and particularly for his very fair treatment and unfailing courtesy to those of us on the minority side.

The bill before the House today is important for, first, the subject matter is important, because the evidence has been overwhelming that electronic surveillance within the United States for foreign intelligence collection is vital to the national security interests of the United States, and to the continued freedom and well-being of our citizens.

This bill is important, because it will establish a precedent for other deliberations of this body as we undertake our responsibilities to oversee the intelligence and intelligence-related activities of the U.S. Government.

I am confident that responsible Americans understand the importance of obtaining foreign intelligence information, both abroad and at home, against those foreign powers whose interests and ambitions are inimical to our continued freedom. We are aware that the needs for accurate, timely foreign intelligence information have expanded rapidly in recent years, both in categories of information required, and in the sources of this information. A common thread that runs throughout foreign intelligence deals with communications. To control agents; to task these agents against targets within the United States; and to acquire the information gathered: All require communications networks. Thus, it is evident that electronic surveillance within the United States for foreign intelligence collection is as necessary today as it was when the practice was instituted during the Roosevelt administration. In fact, it has become indispensable to the viability of our intelligence organizations.

The first subject which I would like to address is the need for any legislation. Testimony to the Congress over the past several years has revealed several facts about domestic use of electronic surveillance for foreign intelligence collection. First, each administration since F.D.R. has determined that such surveillance was essential to the national security of the United States. Second, each administration from President Roosevelt through President Nixon handled the matter of domestic electronic surveillance in great secrecy. Third, in each administration, to varying degrees, rights of Americans were violated in the name of national security when no national security interest was evident. In other words, each administration engaged in electronic surveillance in the interest of national security; events and activities were handled in secret, few checks and balances existed, and some abuses occurred.

Starting with the Ford administration, and continuing through the current administration, domestic electronic surveillance for foreign intelligence collection has been conducted under the strict provisions of widely publicized executive orders. For example, President Carter's Executive Order 12036 contains the following provisions for domestic electronic surveillance for foreign intelligence collection. First, these activities can only be undertaken as permitted by the executive order, under procedures established by the agency head and approved by the Attorney General. Second, these procedures shall, first, protect constitutional rights and privacy; second, insure that information is gathered by the least intrusive means possible; and third, limit the use of information gathered to lawful Government purposes. Further, electronic surveillance shall not be conducted against a U.S. person without a judicial warrant, unless the President has authorized the type of activity involved, and unless the Attorney General has both approved the particular activity and determined there is probable cause to believe the U.S. person is an agent of a foreign power.

The net effect of Executive Order 12036, and its predecessor, Executive Order 11095, according to all evidence received in committee, has been a responsive intelligence collection program which has not impinged on the rights or liberties of U.S. persons. What then is the rationale for legislation? Much emphasis is placed on the fact that, even though intelligence operations have not been unduly constrained, and the rights of our citizens have been protected, executive orders can be changed, and that future administrations might engage in domestic electronic surveillance in the name of national security to the detriment of the American people. I do not find this a compelling argument. First, I believe in the power of accountability. Executive Order 12036 clearly defines what is permitted, under what circumstances, and establishes a chain of accountability to officials elected by the people of the United States.

A second argument presented by some witnesses concerned the apparent uncertainly, and uneasiness of our executive department officials, about the legality of these operations, particularly as courts hear more cases in which foreign intelligence electronic surveillance is involved. But this ignores the fact that the courts have ruled overwhelmingly that the President has the constitutional authority to authorize domestic electronic surveillance for national security purposes.

Nevertheless, I do believe that there is a need to pass legislation to regulate the use of electronic surveillance for foreign intelligence in the United States.

What type of legislation is required? The efforts of the permanent Select Committee on Intelligence have centered on one major area—the involvement of the judiciary. But, I believe an aspect other than involvement of the judiciary has not received sufficient attention. That aspect concerns the focus of our efforts. We should not be drafting legislation which hobbles the collection capabilities of our intelligence or-

ganizations. During the past 20 years, the world has grown smaller, the number of potential adversaries has increased, greater areas of the Earth are of vital concern to the United States. Our potential enemies are more active in this country. More sophisticated techniques are available to foreign agents and technology has greatly diminished time and distance factors. Further, the Nation is involved more frequently in crises, in various parts of the world, crises which develop and change rapidly. Therefore, as our needs for intelligence increase and become more urgent, opportunities to collect this vital information also increase. At this time, successful performance by our intelligence organizations becomes highly dependent on their ability to react positively and quickly to collection opportunities. At this time, our national security interests become paramount, and legislation must provide for an effective, efficient, legal way for our intelligence organizations to operate.

Therefore, the legislation which should be adopted by this distinguished body should be balanced, and have the following characteristics. It should:

First. Be supportive of our vital intelligence organizations, and conducive to enhancing our national security interests.

Second. Be flexible enough to provide responsiveness in times of crisis and war.

Third. Be protective of individual rights and liberties of U.S. persons.

Fourth. Provide for effective congressional oversight.

This legislation should not:

First. Restrict the legitimate functions and responsibilities of the intelligence services.

Second. Overreact to abuses which admittedly are not taking place now or to grant to foreign intelligence agents the rights enjoyed by the American people.

Third. And finally, should not transfer constitutional responsibilities for national security and foreign policy from the President and the Congress to the judiciary on matters so essential to our well-being.

I would hope then, following our consideration of H.R. 7308 and the amendments which will be offered, the resultant legislation will serve our national security interests well, protect the rights of U.S. citizens, and that this legislation will serve as an effective precedent for future legislation in providing our intelligence organizations a sound, legal basis for their continued contribution to our national security and the freedom of all our people.

Mr. McCLORY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I appreciate the very generous remarks which have been made here regarding "McClory Day before the House of Representatives." However, I would like to say that, in my view, this is a day in which we want to consider very carefully the national security interests of our Nation, particularly the activities of our various intelligence agencies.

Mr. Chairman, I merely want to indicate my interest in this subject in behalf of what I believe are the best interests of our Nation in this area; and I have no personal or individual interest in this legislation other than to undertake to do what I think is in the best interests of our Nation.

Mr. Chairman, alhough I am controlling one-quarter of the time for general debate, as ranking member of the Committee on the Judiciary, I would like to switch hats for a moment to thank the chairman of the other committee on which I sit, and I might say that I am controlling the time for the Select Committee on Intelligence, and say that the distinguished gentleman from Massachusetts must be commended for both his outstanding ability and for his sincere interest in this and other legislation and in the other activities of our committee.

Also, as I said before, I want to commend the gentleman from Illinois (Mr. MURPHY), with whom I worked in this subcommittee. Both of these men have devoted a great deal of time to the consideration of this very complex issue or the number of issues which are encompassed in this legislation. While we have different opinions, I am sure we are all looking toward the same end in what we are doing here.

Mr. Chairman, in my view, what we should undertake to do is to repose responsibility and accountability in the executive branch of Government and not permit that responsibility or accountability to be transfered to the Judiciary.

H.R. 7308 would prevent our intelligence agencies, operating on the President's constitutional mandate to protect our national security, from taking timely and direct action to obtain vital foreign intelligence information. The bill would require the President, on the other hand, to abstain from securing this information or exercising his responsibility in this area until after he first secured a warrant from a newly established special court. It is true that there is a 24-hour leeway there, which is authorized in cases of emergency. However, what if during the 24-hour period the President should decide he wants to have this authority exercised, and at the end of that 24-hour period the court says, "No, you cannot exercise that authority!" Then what happens? It all of a sudden comes to a stop; and of course, the President has been doing something which the court says he never should have been authorized to do in the first place.

Mr. Chairman, this business of reposing all this authority in a special court is an extreme overreaction to the so-called Watergate period and to the abuses which occurred during a period of some 2, 3, or 4 years ago, and perhaps during a long period of time prior to that.

As a matter of fact, in recent years, the intelligence agencies have been operating under Executive order, an Executive order first issued by President Ford and subsequently an Executive order issued by President Carter. There is no evidence, no evidence whatsoever, in the testimony before the Committee on the Judiciary or before the Intelligence Committee which would indicate any violation of any individual rights or any abuses by any of the intelligence agencies during this period.

Therefore, what is it which we are trying to correct through this legislation? It is not abuses which are now occurring. I defy anyone to suggest that there are such abuses occurring now. What we are trying to correct apparently are some abuses which have occurred some time ago and which have been corrected by the Executive orders which are being complied with.

This whole area of foreign intelligence information securing and the entire field of foreign affairs is not appropriately vested in the judiciary in any sense.

Mr. Chairman, as Justice Jackson said in the Chicago Southern versus Waterman Steamship C. case—

> Issues involving the national security are delicate and complex and involve large elements of proficiency. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil.

Mr. Chairman, the persons referred to by Justice Jackson are the elected officials of the people, the President of the United States and the Members of Congress, that is, those of us in this Chamber and in the other body and down on Pennsylvania Avenue in the White House. The persons referred to by Justice Jackson are not members of the judicial branch of Government, who are not elected by the people.

Let us take, for instance, the question of the abuse of authority by the judiciary in this area. Who takes care of that kind of abuse? No one. There is no discipline, no discipline in this legislation or anywhere, with respect to the judiciary.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, I want to commend the gentleman from Illinois (Mr. McCLORY) on that statement and I agree with him, perhaps for somewhat different reasons than those which the gentleman from Ilinois has expressed.

I wonder if the gentleman would speculate on this. Assuming that this bill passes and becomes law and then we have reason to feel that some Federal judges are too lax in giving out the judicial warrant, does the gentleman feel that there is any way by which we as a legislative branch could even question these judges?

Mr. McCLORY. I do not know of any existing machinery by which we could take any disciplinary action against the court. I might say one of the reasons given for vesting this kind of authority in the judiciary is, that while we have had the warrant requirement with regard to so-called title III provisions of the omnibus crime bill, with regard to domestic security, and with regard to organized crime, and the charge is made, or the statement is made, well, the courts have given warrants in all except three cases. What that indicates to me is that maybe those who are in support of this special court feel that the court is going to be some kind of a patsy for the Executive who might in the abuse of

authority be able to fall back on the judicial imprimatur and say, "Well, I have abused my authority, but it is OK because the judge said it is OK."

Mr. DRINAN. If the gentleman would yield further, under the bill it is provided that Federal judges may hire people from the executive branch. People from the CIA, in other words, will present the case, and people who will even be law clerks, so to speak. Does the gentleman think under this bill they could resist any questioning by the Congress, saying that "We are actually court officers. After all, we are paid for by the executive branch"?

Does the gentleman think that is a further barrier to adequate oversight by the Congress of what the courts will do?

Mr. McCLORY. From the gentleman's statement, of course, it demonstrates that we are venturing forth in an entirely unexplored area. We are establishing for the first time in our history a body of secret law. Some people have referred to this kind of secret court proceeding as a star chamber proceeding. I would not want to characterize it in that way, but I would say it is unprecedented that the personnel in the court, if they are going to be part of the judiciary, are going to pose additional risks. If they are not part of the judiciary, then we are implanting in the judiciary another branch of Government in a sort of hybrid system that I say is unprecedented, and for which I say there is no constitutional authority.

Mr. DRINAN. I agree with the gentleman from Illinois. We are doing something totally unprecedented in the whole history of Anglo-Saxon jurisprudence.

Mr. McCLORY. I just want to say to conclude my remarks that I do not see the role that I or others who are objecting to this legislation have as engaging in any flag waving or being superpatriots here today. It seems to me that what we are doing is trying to respect the judgment of those who are the most experienced in this field. When I speak as I do, I speak in the interest of a statement which the chairman of the subcommittee, the gentleman from Wisconsin (Mr. KASTENMEIER) has received from a former Director of the CIA, William Colby, who says that this warrant requirement should not be extended to include foreign powers and foreign agents, but should be limited to American citizens, and I will be offering an amendment in that regard. I likewise am referring to the support for my position on this legislation which has been expressed by John S. Warner, former General Counsel, Central Intelligence Agency; John M. Maury, former Legislative Counsel, Central Intelligence Agency and former Assistant Secretary of Defense for Legislative Affairs; Lawrence R. Houston, former General Counsel, Central Intelligence Agency; Walter L. Pforzheimer, former Legislative Counsel, Central Intelligence Agency; Ray S. Cline—a well known individual—former Deputy Director of Intelligence, Central Intelligence Agency; and Daniel O. Graham—Gen. Daniel O. Graham, retired—former Director of the Defense Intelligence Agency. All of those persons have expressed themselves forcefully in opposition to this legislation and in support of the position I am advancing.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from California.

(Mr. LAGOMARSINO asked and was given permission to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Chairman, I ask my colleagues to join with me in opposition to H.R. 7308, Foreign Intelligence Surveillance Act of 1978, and in support of the McClory amendment.

On June 25 of this year, the New York Times carried a story entitled "CIA Refuses Foreign Bids For Anti-Terrorist Help." The article goes on to relate that out of fear of violating legal prohibitions against engaging in covert activities abroad, the CIA refused a request from the Italian Government for a psychiatrist trained in terrorist matters, and for sophisticated eavesdropping equipment to help deal with the Red Brigade's kidnaping of Aldo Moro. I submit that this timorous attitude has been generated by harsh and unrelenting domestic criticism of the Agency, which apparently is made without considering the effect such criticism has on the Agency's ability to function. Now it seems that the effectiveness of the CIA is severely impaired. And in this context, the result of this proposed legislation might well be to administer a coup de grace to the CIA.

It is difficult to think of a more inappropriate and misguided policy to adopt toward our Nation's intelligence agencies than that embodied in this bill, which would impose judicial processes and standards on the surveillance of the activities of foreign agents operating in this country. The measure of sound policy is that the principles which are choosen to govern action should be suited to the particular circumstances in question. A recent example of the inappropriate application of principles to circumstances, was the debate over Cuban involvement in the invasion of Zaire's Shaba Province. Critics of the administration's evidence of Cuban involvement were not persuaded because the administration's evidence was largely circumstantial. But is that not all one can reasonably expect given the difficulties of acquiring information about covert activities conducted in a faraway land? Did the critics believe we could have issued subpenas, and given the rebels court appointed counsel?

Thus we can see that the surveillance of foreign agents operating in this country, by its nature requires secrecy and speed of execution—characteristics of the executive branch of government. As Justice Robert Jackson wrote in the Court's decision in Chicago & Southern Air Lines, Inc. against Waterman Steamship Corp., the judiciary is not equipped to deal with matters concerning foreign intelligence:

> The President, both as Commander-in-Chief and as the nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confined by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither the aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.

Furthermore, as Justice Jackson's opinion implies, not only is this legislation inappropriate and unwise, but that it may well be unconstitutional to involve the judicial branch in matters left by the Constitution to the executive and legislative branches.

Primarily as a result of the machinations of those minions of the Kremlin, the KGB, international politics largely resembles the state of nature described by Thomas Hobbes as the "war of all agianst all," in which life is "nasty, brutish, and short." Faced with such an inexorable and grim necessity, prudence dictates that we resort to whatever measures are necessary to insure our own existence. The means which would be shackled by H.R. 7308 are merely defensive in nature, and thus constitute the necessary, but by no means, sufficient conditions of national survival. Is it really necessary for this Nation to unilaterally disarm its intelligence agencies? What possible principle can justify the extension of the protections of the Bill of Rights to cover the KGB?

I urge the support of the McClory amendment.

Mr. McCLORY. Mr. Chairman, I agree with the statement of the gentleman from California (Mr. LAGOMARSINO).

Mr. Chairman, I might just add that if we do involve the judiciary in this area, what we are doing is involving all three branches of Government in national security and intelligence matters, because we already have the two committees of the House and the Senate exercising extensive oversight, plus the executive. And now to involve the judiciary means that we have all branches of Government in this one area.

I want to emphasize that opposition to this legislation is certainly not in any way a partisan effort. There is strong bipartisan opposition to this legislation, as many of the Members know who have received "Dear Colleague" letters. I think one was signed by 21 Democratic Members of the House and 16 Republican Members of the House. There are strong objections to this legislation on both sides of the aisles, and there are amendments that will be offered by Members on both sides of the aisle.

One gentleman who has raised objections and made very strong statements

in the printed report of the Committee on the Judiciary and who questions some of this legislation is the gentleman from Pennsylvania (Mr. ERTEL), and I now yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, I thank the gentleman from Illinois (Mr. McCLORY) for yielding.

Mr. Chairman, I would like to direct a couple of questions to the gentleman.

In relation to the comments offered by the gentleman from Massachusetts (Mr. DRINAN), I note he asked: What do we do if they issue warrants lackadaisically or without purpose and easily? If warrants are issued, how do we know whether or not the courts are in fact issuing these warrants on a rather regular and routine basis without really examining them? How would we ever know that if this is a secret court.

Mr. Chairman, could the gentleman answer that question?

Mr. McCLORY. Mr. Chairman, the only way I could answer that is to say that we will continue to have our House and Senate Intelligence Committees operating, and we will continue to exercise oversight. But with respect to information that is supplied to the court, I question that we would be able to delve into the secret proceedings of the court. I think the court would have to control that, so in a way our Intelligence Committee would be further limited in oversight by whatever the court decided.

Mr. ERTEL. Mr. Chairman, would we in fact be able to go back and try to determine whether there was in fact justification based upon the written reports by the Executive to the judiciary?

Mr. McCLORY. I doubt that we could do that. However, the measure provides for the retention of records, and I assume this means the retention of records by the judge or by the court, for 10 years. That again suggests that there is very apt to be extensive litigation following the enactment of this legislation, if it ever gets enacted. because those records could be made available to a person who might suspect that he was the subject of an electronic surveillance.

As we know and as the Attorney General now knows, a judge who wants information can subject a person to all kinds of proceedings. I might say that the city of Chicago is now under a very serious attack because of an action by the ACLU to delve into the records of the intelligence activities carried on 10 years ago.

Mr. Chairman, if seems to me that getting this information into the courts' jurisdictions suggests all kinds of horrendous involvements.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield on that point?

Mr. McCLORY. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, the gentleman from Illinois (Mr. McCLORY) is on the Committee on the Judiciary in the House, and he is perfectly conversant with the Freedom of Information Act. If this were left exclusively with the executive, anyone could under the Freedom of Information Act petition for every file and every wiretapping conducted today. That is what is being done.

Furthermore, there have been suits brought against agents who conducted these surveillances, and we cannot get our counterintelligence agents to conduct surveillances today because they have no statutory protection as exists in this proposed bill.

Mr. McCLORY. I am certainly not opposed to any statutory language which would supplement the existing guidelines. As the gentleman knows, I have offered that kind of legislation, which would be as full and complete protection as would be these judicial procedures with all its faults.

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. I thank the gentleman for yielding.

If in fact a warrant is issued for a person's communications, or there is an electronic bug placed in his home and no useful national security information comes out of it in any way, shape or form, and there is no threat to national security, is there any provision in this law, as it is being proposed, to advise that individual that he has been tapped, that he has been investigated, and there may have been an entry into his residence, even after they have determined there is absolutely unwarranted invasion of his privacy?

Mr. McCLORY. Mr. Chairman, I would answer the gentleman from Pennsylvania by saying no. I know the gentleman has an amendment that he proposes to offer along that line, and I guess I would consider that subject at that time.

[Mr. KASTENMEIER addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. BUTLER. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio (Mr. ASHBROOK), a member of the full committee.

(Mr. ASHBROOK asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Chairman, first, I would like to say that we have had several unique arguments here.

Page 101 of the report indicates that section 201(c) would repeal 18 United States Code, section 2511(3), which states that nothing in chapter 119 or section 605 of the Communications Act of 1934 shall limit the constitutional power of the President to gather necessary intelligence to protect the national security.

This report goes on to say that the Keith case held that the Congress was not really taking anything from or adding anything to the President's power, just "merely provided that it shall not be interpreted to limit or disturb such power as the President may have under the Constitution. In short, Congress simply left Presidential powers where it found them."

Judging from the last colloquy, there are a number of Members of this body who think that we can take that constitutional power of the President, the inherent power of the President, and alter or limit it by a statute. Clearly what we are doing, as was pointed out by my colleague, the gentleman from Illinois (Mr. McCLORY), is to delete the statement of the Congress in the 1968 Omnibus Crime Act, by language on page 67 which cleverly states that exclusive means for electronic surveillance shall be those that are in this particular statute. This effectively removes the language in section 2511(c).

I do not think we can take away the inherent power of the President. If President Carter wants to say, for his short time in office, that he is not going to use the powers, that is fine. But I do not think President Carter can limit what a future President does under the proper constitutional prerogatives of that future President. To try to end run this issue is, I think, not only bad policy, but may very well be unconstitutional.

Every Federal judicial circuit which has had cause to rule on the issue has held that the President has constitutional power to order warrantless electronic surveillance to gather foreign intelligence information. That is, the third, fifth, and ninth circuits. This was also recognized in the recent Humphrey-Truong spy case.

Before Judge Bell became Politician Bell, this is what he said, as a judge on the Fifth Circuit Court of Appeals:

> Because of the President's constitutional duty to act for the United States in the field of foreign relations, and his inherent power to protect national security in the context of foreign affairs . . . The President may constitutionally authorize warrantless wiretaps for the purpose of gathering foreign intelligence information. Restrictions upon the President's power which are appropriate in cases of domestic security become artificial in the context of the international sphere.

As I said, that was before Judge Bell became Politician Bell.

The second thing I would like to point out is that my friend and colleague, the gentleman from Wisconsin, indicated there was a unique coalition here. Well, I think it is a unique coalition. The only thing unique about it is the way you define "coalition." It reminds me of the columnist, Dorothy Thompson, who, some 30 years ago, referring to a lover of a great writer—I will not mention his name—and indicated that his emotions ran the alphabetical gambit from A to C. That is about the way this coalition runs. It is a coalition running the alphabetical spectrum from A to C. Mr. Halperin's group, and groups of that type, run the philosophical gambit from about A to C. Where are the other 23 letters of the alphabet? We have not heard anybody mention the American Legion, American Security Council, Veterans of Foreign Wars, broad-based groups which have millions of members. Oh, no. You take a little narrow group, which has worked together on this bill, and say that they represent a broad consensus. Unique maybe, a consensus, no.

Well, the thing that is unique is to call it a consensus, because they started out in the same place and ended up in the same place. So, there really was not any consensus. Nobody has talked about the former FBI agents. The Society of

Former FBI Agents is opposed to the overreach of this legislation. The Association of Former Intelligence Officers—CIA—opposes this bill. The only people who are for this bill are the administration people who, as in most administrations, are under the iron heel of administration policy. They dutifully come forward and say, "Yes, we support this legislation."

No former director of the CIA supports it. None of the down in the ranks officers who have worked in the field—and I have talked to hundreds of them—support it. I know of not one FBI agent who supports it.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. BUTLER. Mr. Chairman, I yield 3 additional minutes to the gentleman from Ohio.

Mr. ASHBROOK. No former FBI agent supports it; no former CIA agent who had the responsibility out in the field, who came before our committee, who wrote or communicated to many of us, said, "I favor this legislation."

So, when we are talking about a unique coalition, a unique consensus, we are not really talking about that. We are talking about a unique definition of coalition and consensus because it is basically outside of this Congress—I do not point the finger at Members of this Congress—but my main complaint is that H.R. 7308 has largely been written by people outside this Congress, and largely by the anti-intelligence clique which is a part of this so-called unique consensus.

These are many amendments which should be offered. I will offer a number myself. I will support the amendments offered by my colleague, the hardworking and able gentleman from Illinois (Mr. McCLORY). I would hope that we could amend this bill so, that it would be something that would help rather than hinder the intelligence-gathering operations of this country.

The bill before us today is the product of considerable work and effort by a large number of people in and out of government. These range from administration officials and former intelligence officers to spokesmen for anti-intelligence groups that wish to dismantle our intelligence gathering ability. The House Permanent Select Committee on Intelligence and its dedicated staff have taken all of the views into consideration in reporting out this bill.

The basic issue in H.R. 7308 is to what extent it limits intelligence gathering, and to what extent it authorizes it. My concern is that too much attention has been paid to those who would limit our intelligence gathering ability. While protecting the rights of Americans, we should not confer these rights on foreign agents. Even Vice President MONDALE when he was in the Senate, said:

> As far as I am concerned, foreign spies in this country should have no rights. Probably that is a little crudely put, but a KGB agent and so on—I shouldn't say it—I could care less how we proceed to get information from them or influence their behavior while they are in this country. What I am worried about is the application of these activities and their effect on American citizens. That is what I am talking about. (Testimony before the Senate Intelligence Committee, June 29, 1976, p. 69.)

I have a number of concerns about this bill. One of the main issues is the introduction of the courts into the intelligence gathering process. There is clearly some security risk as a result of more people having access to the information, despite the support given to the bill by the leadership of the intelligence community. Some of those leaders, who support the bill, have indicated that they do so as part of the administration team or that they can "live with the bill." On the other hand, working level members of the intelligence community have major problems with H.R. 7308.

H.R. 13442 introduced gy the gentleman from Illinois (Mr. McCLORY) would solve the problem of the courts. This is a major constitutional problem. Although the congressional proponents of the bill argue that it takes no position on whether the President has the inherent power to conduct national security wiretaps. Common Cause, an active supporter of H.R. 7308 argues that the bill—

> Eliminates once and for all the doctrine that the Executive Branch has inherent power to conduct national security wiretaps. (Letter to all Members of Congress, August 7, 1978.)

There are other problems as well. For example, the bill would provide criminal penalties for FBI agents who violate the minimization procedures. Certainly, an administrative punishment would be sufficient. What a contradiction. The anti-intelligence extremists want to be able to jail FBI agents while those who collaborate with hostile foreign governments could not even be surveilled. We must make sure that this bill does not accommodate either of these desires. It should instead set standards for the intelligence gathering so vital to our national security.

This legislation has been referred to as a bellweather for future restrictions on the intelligence community. A bill proposed by the ACLU and other extremist groups such as the Committee for Public Justice and the Center for National Security Studies would require warrants for informants and undercover agents. The proposed bill is aptly titled "A Law to Control the FBI." A warrant for informants and undercover agents is the ridiculous but logical continuation of a requirement for a warrant to electronically surveil a foreign embassy or agent.

Let us take a real case, and see what this bill would do. On July 16, 1978, Kristina Berster, a member of the Baader-Meinhof terrorist gang, was apprehended trying to cross the U.S. border from Canada. She was in possession of a stolen and altered Iranian passport.

Investigation revealed that she had been in close association with three other people while in Canada. These people all claimed to be U.S. persons. They are now under indictment.

Under this bill, neither the individuals nor the groups could have been electronically surveilled even with a warrant. The Attorney General would have had to prove to a judge that each of these persons, "knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for, or on behalf of a foreign power." The group could have been targeted as "a faction of a foreign nation" only if it was "not substantially composed of United States persons"—something difficult if not impossible to prove.

The purpose of the surveillance would have been to determine if these people were involved with the Baader-Meinhof terrorist, Kristina Berster in planned terrorism in the United States. Under H.R. 7308 they could not have been electronically surveilled to obtain this information.

I have amendments to propose to this bill, and I will support amendments that will be introduced by some of our colleagues.

The House Permanent Select Committee on Intelligence has already amended this bill. A significant amendment which was passed by voice vote by the committee was one which I had proposed. This amendment added the word "member" to the definition of agent of a foreign power. Just as some "foreign powers" have employees, others such as terrorist groups or foreign based political organizations have members. Of course not every foreigner who falls under this definition would be surveilled, but it would be possible to do so if necessary.

It will be a difficult job, but this Congress should pass a bill that will authorize intelligence gathering against hostile foreign powers and terrorists, without violating the rights of the American people. That is the kind of bill that I could support. I ask my colleagues to join with me in amending H.R. 7308 so that it is consistent with the needs of this country and its people. The first duty of the Congress is to provide for the safety and security of the American people against their enemies, both foreign and domestic. A bill that does less than that does not deserve our support.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, I would just like to indicate one organization which supports this bill, the American Bar Association. Will the gentleman concede that it is a broad-based organization?

Mr. ASHBROOK. It is at least broad.

Mr. MURPHY of Illinois. As a member of the Pike committee, I had before me at that time former members of the CIA. When we asked them why the abuses occurred they said, "We had nobody to go to. There was no statutory standard by which we could refuse an executive who was requesting and ordering us to engage in improper activities."

Mr. ASHBROOK. I agree with the gentleman 100 percent. I agree that they need a charter. I must observe that the charter should be enacted before we come along with this bill, but I doubt if my colleague, who is a very honest and very able colleague, could say that they supported the provisions in this bill.

Mr. MURPHY of Illinois. The gentle-

man was also present in our hearings when we discussed the FBI, and the Attorney General said that agents were hesitant to go into the field today and conduct needed intelligence surveillances because they were being sued all over the United States, including himself, the Attorney General. They needed some statutory protection in this matter, and this is what this bill gives them.

Mr. ASHBROOK. This bill gives them that and a lot more.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I would say that certainly we should provide the FBI with statutory protection, but to create a new special court to divest the executive of responsibility and accountability in this area in order to protect FBI agents seems to me to be an overreaction. What we should do is provide further protection through legislation. We do provide it in the substitute bill I have offered, but not through this mechanism.

The CHAIRMAN. The time of the gentleman from Ohio has again expired.

Mr. BUTLER. Mr. Chairman, I yield 1 additional minute to the gentleman from Ohio.

Mr. McCLORY. I would like to point out that I saw this letter from the president of the American Bar Association. I do not know what kind of survey of the members of the American Bar Association was made. I will say that this bill before us now is substantially different from the bill that was over in the Senate. It is a far reach from the legislation just considered in the subcommittee headed by Mr. KASTENMEIER 2 or 3 years ago, at which time they considered mass coverage and all kinds of other subjects; so that it seems to me that that kind of a statement must be a statement which is not based on knowledge of what this legislation undertakes to do, or what it provides.

Mr. ASHBROOK. I thank my colleague, and I agree with him completely.

Mr. BUTLER. Mr. Chairman, I yield myself 3 minutes.

(Mr. BUTLER asked and was given permission to revise and extend his remarks.)

Mr. BUTLER. Mr. Chairman, I think the points which I would have made in my formal statement have been covered very well by the gentleman from Ohio (Mr. ASHBROOK) and the gentleman from Illinois (Mr. McCLORY), as well as the other Members who have spoken. So, at the risk of repeating myself or repeating what has been said, I will not return to those points except to say that I share the reservations about the constitutionality of what we are about to undertake.

But one thing that has not been touched on is a matter which I would like to mention, because it did come up in the Senate debate.

H.R. 7308 represents a bill that may well prove unconstitutional, while at the same time severely undermine and endanger the Nation's security. Moreover, the bill, in light of recent events, is unnecessary and a prime example of congressional overkill.

My principal concern is that the bill raises serious constitutional questions, in that it may violate article II of the Constitution. H.R. 7308 denies the existence of any inherent authority on the part of the Executive to conduct warrantless electronic surveillance by vesting Federal courts with the jurisdiction to authorize—or to refuse to authorize, through a warrant procedure, foreign intelligence gathering activities. In Presidential power to conduct foreign intelligence surveillance arises under the President's article II powers as Commander in Chief of the Armed Forces of this country and as the officer primarily responsible for the conduct of our foreign affairs. This Executive power to conduct warrantless electronic surveillance for foreign intelligence purposes has been asserted by every President at least since Franklin D. Roosevelt.

The judicial warrant approach in the administration's bill is premised on the proposition that the fourth amendment to the Constitution presumptively requires a warrant for every search. The underlying reasoning for this assertion is the Supreme Court's holding in the Keith case, where it ruled that a warrant is required for electronic surveillance employed for domestic security purposes. However, the warrant requirement in the Keith case was limited to domestic security cases, as the Court made it clear that they were in no way addressing the issues involved in foreign intelligence electronic surveillance. By the same token, the circuit courts that have considered the issue of the inherent constitutional right of the President to authorize warrantless electronic surveillance have held that such power does exist.

Coupled with the judicial recognition of the inherent power of the President to authorize warrantless electronic surveillance, is the fact that there is no existing case authority for vesting the Federal courts with jurisdiction to authorize or refuse to authorize foreign intelligence gathering activities as proposed in H.R. 7308. The U.S. Supreme Court rejects such authority in *Chicago & Southern Air Lines Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948) holding:

> . . . It would be intolerable that courts, without the relevant information should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the Government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.

The constitutionally questionable provisions of HR. 7308 culminate for the express purpose of protecting the privacy of Americans against their own intelligence agencies. This bill comes at a time when the Soviet Union and other hostile foreign governments are enjoying increased opportunities for espionage in this country. During the Senate debate of S. 1566, Senator MOYNIHAN stated that—

> I would not be surprised if upwards of one million American citizens were, at this moment, having their telephone calls listened to by the KGB, the committee of state security of the Soviet Union. They are overheard by receivers on the top of the Soviet Embassy here in Washington.
>
> A new Soviet Embassy soon to be built on a hill in Washington will, for this purpose no doubt, be even better situated for the interception of the telephone calls of anyone on this floor, or in the gallery, or who will read this Record. . . .

Given this present state of events, I believe the proper focus of legislation should be in the direction of protecting the American people and our country from the espionage activities of foreign governments. Instead, we will be unduly restricting our foreign intelligence capabilities by this bill, and as a result, needlessly subjecting the American people to the increasing espionage activities of foreign intelligence agencies.

Closely aligned with the fact that we should be legislating to protect the American people from foreign intelligence operations, is the fact that H.R. 7308 ignores the experience of the past few years under Executive orders issued by Presidents Ford and Carter.

The guidelines contained in the Executive orders have, according to all the evidence, rendered the gathering of foreign intelligence by U.S officials abuse-free. This given situation further illustrates that there is no need for H.R. 7308. Accordingly, I urge my colleagues to reject H.R. 7308.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Chairman, I would point out I think it is important that we have legislation which spells out in statutory form the very explicit and very appropriate guidelines that are contained in the Executive orders of former President Ford and now President Carter, and that this kind of control is extremely important and we should retain congressional oversight, as we do retain substantial congressional oversight in the Senate and House Intelligence Committees.

But by establishing a special court and involving the Judiciary is unique. As a matter of fact, it is unique in the world. There is no other nation in the world that imposes a restriction on the Executive such that there is here of transferring to the Judiciary the decision as to whether or not electronic surveillance should or should not take place.

So it seems to me what we are proposing to do here, we are doing not only to ourselves but also with respect to our surveillance of foreign agents and foreign powers in our country, something that no other country imposes on itself with

respect to its own citizens or with respect to the electronic surveillance of others.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Chairman, I thank my chairman, the gentleman from Illinois (Mr. MURPHY), for yielding me this time.

(Mr. MAZZOLI asked and was given permission to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Chairman, first of all I would like to bring to the attention of the committee the fact that in this morning's paper, the Washington Post, there was, I think, a very appropriate and solid editorial in behalf of passage of the bill before this body, and I would like to read the last paragraph, because I think it succinctly states the case:

The proposed legislation—

Which, of course, is the legislation that is now before us, H.R. 7308—

would put a stop to abuses—

And that refers to abuses of electronic surveillance—

of that kind without hampering legitimate national security investigations. It would simply put an impartial arbitrator—in the person of a judge—between every citizen's privacy and the desire of the government to penetrate it. That would not be a new role for Federal judges; they serve constantly as buffers between the government and the individual. But it would provide a new kind of protection that events of the recent past have shown is sorely needed.

I think that is an important editorial.

Also, Mr. Chairman, I would like to mention that on June 29, the New York Times—which was still publishing then—had an editorial in behalf of H.R. 7308 which was, at that time, before the subcommittee chaired by the gentleman from Wisconsin (Mr. KASTENMEIER). In the Times editorial it was stated that this bill, notwithstanding its problems, was still an important bill which should pass. The case is succinctly stated in the final paragraph of that editorial:

The Foreign Intelligence Surveillance Act is a wise solution to a problem that for years looked politically impossible to solve. To lose it now would turn a potential model of legislation into a travesty of the legislative process.

Mr. Chairman, I would like to make one comment. It was discussed earlier in the debate between the gentleman from Illinois (Mr. MCCLORY), the gentleman from Wisconsin (Mr. KASTENMEIER), and the gentleman from Pennsylvania (Mr. ERTEL) that the President does possess a unique power, an inherent power to conduct foreign intelligence wire tapping, and that there is no way that the Congress can limit this constitutional power.

I think that the gentleman from Wisconsin (Mr. KASTENMEIER) in his discussion with the gentleman from California (Mr. EDWARDS) described the reason why Congress can, indeed, circumscribe that power.

But I think that the Committee on Intelligence, in its report on page 18, and the pages which ensue, is also worth reading. It shows that no holding of the Supreme Court has confirmed that the President has this inherent power to wire-tap. The Keith case just simply passed on that point and left the final determination to another day and another court. And so, without a specific holding, I think this is certainly an opportune time to legislate on the issue of a President's inherent right to electronically surveil.

And as the gentleman from Wisconsin (Mr. KASTENMEIER) said, if there is a future President who orders a wiretap without a specific court order, that President would be walking in the face of what this Congress will have said is the proper mode of conduct. This certainly guarantees that there will be a challenge taken to the highest court in the land.

So, Mr. Chairman, I think it would serve the Members well to read pages 18, 19, and 20 of the Intelligence Committee's report. I think they are very instructive on this point.

Mr. Chairman, I would like to also mention something that I believe the gentleman from Pennsylvania (Mr. ERTEL) brought up.

Let me say first that the gentleman from Pennsylvania (Mr. ERTEL) has been a valuable member of the House Commitee on the Judiciary, in his first term, and was also a contributing member in the subcommittee during its deliberations on this bill.

The gentleman from Pennsylvania (Mr. ERTEL) brought up the fact that the special courts would not be writing any decisions and, therefore, there would be nothing for this House nor for these two Intelligence Committees to be looking into to evaluate the actions of the warrant procedure.

But, if the gentleman would refer to pages 95 and 96 of the Intelligence Committee report, which discusses section 108 of the bill, the gentleman would be reasonably satisfied the Intelligence Committee, the committee chaired by my friend the gentleman from Massachusetts (Mr. BOLAND) has unequivocably stated its intention and, indeed, its determination, to play a very intimate role in the future unfolding actions of the special courts.

I would especially, as a matter of fact refer to page 95 of the committee report.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 additional minute to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman for yielding.

I think the second full paragraph on page 96, is important. It states:

As interpreted by the committee, the word "fully" means—

And that "fully" refers, of course, to full information—

that the committee must be given enough information to understand the activities of—

And then, with some words deleted—

of all electronic surveillances. To preserve the Intelligence Committee's right to seek further information, when necessary, section 108 makes clear that nothing in this title shall be deemed to limit the authority of those committees to obtain such additional information as they may need to carry out their respective functions and duties.

Mr. Chairman, I would like to assure the gentleman from Pennsylvania (Mr. ERTEL) that if the gentleman from Kentucky remains on the Committee on Intelligence, I certainly would be determined to seek from these special courts the kind of full information which would give us a chance to develop exactly how they are functioning under the law.

Mr. ERTEL. Mr. Chairman, if the gentleman will recall the colloquy, there is no written opinion by a court; there are no opinions which are recorded for the next court to consider the next case. There is no stare decisis.

Does the gentleman suggest that there are going to be written opinions to provide for stare decisis?

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has expired.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 additional minute to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. FOWLER. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Georgia.

Mr. FOWLER. In response to the continued questions of the gentleman from Pennsylvania (Mr. ERTEL), under the special court provision of this legislation, section 103 on pages 41 and 42 of the bill, may I read specifically subsection (e), beginning on line 21, as follows:

Proceedings under this title shall be conducted as expeditiously as possible. If any application to the Special Court is denied, the court shall record the reasons for that denial, and the reasons for that denial shall, upon the motion of the party to whom the application was denied, be transmitted under seal to the Special Court of Appeals.

And then subsection (f) says the following:

Decisions of the Special Court of Appeals shall be subject to review by the Supreme Court of the United States in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code, except that the Supreme Court may adopt special procedures with respect to security appropirate to the case.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has again expired.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 additional minute to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, that provision only applies to a denial of an application. If there is a granting of the application, there is no written opinion stating why there is a granting of an order. There is no setting out of the standards which apply.

It only says, "I deny this because, one, I do not find that there is a sufficient evidence, period." That is it.

When an order is granted, the court says, "Here it is," and the reasoning and the standards are not set out.

The bill does not provide for that in any way, shape, or form.

Mr. MAZZOLI. I think the gentleman is going to find that the actual practice will be what the gentleman from Georgia (Mr. FOWLER) has suggested. The gentleman from Kentucky and the gentleman from Georgia, to the extent we remain on the Intelligence Committee, we will attempt to see that this special court does not become either a rubber stamp or an impediment.

Mr. ERTEL. Is the gentleman suggesting that he can demand from the court written opinions be provided to a legislative committee, thereby interfering with the Judiciary?

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has again expired.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 additional minute to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Chairman, I again say that I support H.R. 7308, the Foreign Intelligence Surveillance Act of 1978.

This uniquely important—and much needed—legislation was first proposed by President Gerald Ford and Attorney General Levi in 1975. It is supported with equal vigor by President Jimmy Carter and Attorney General Bell.

It has been the subject of lengthy hearings and careful study by several Senate and House committees, including two committees on which I am honored to serve—the House Intelligence and Judiciary Committees.

Drawing on this detailed record, the House Intelligence Committee, ably lead by Chairman BOLAND and Chairman MURPHY, spent many hours subjecting each of the bill's provisions to searching scrutiny. Our committee heard from all interested parties.

This is as it should be. There are no issues of more basic importance to our country than those involving the national security and individual civil liberties.

The bill before you, then, is, in my opinion, a product of mature reflection and reasoned deliberation.

As reported by the Intelligence Committee, H.R. 7308—except in three narrowly defined circumstances, not likely to involve U.S. persons—would require a judicial warrant for all electronic surveillance conducted in the United States for foreign intelligence purposes.

Under H.R. 7308, surveillance could be undertaken only to collect foreign intelligence information and could be targeted only against foreign powers or agents of a foreign power. Both "foreign power" and "agent of a foreign power" are terms carefully defined in the bill.

A U.S. person—a term also carefully defined in H.R. 7308—can be considered an agent of a foreign power only if he engages in certain activities on behalf of a foreign power which involve or may involve criminal acts.

To further protect U.S. persons, the bill requires a judge to approve procedures to minimize the acquisition, retention and dissemination of information about a U.S. person which is collected as incidental result of foreign intelligence surveillance.

H.R. 7308 establishes a national policy that a judicial warrant authorizing foreign intelligence electronic surveillance is the proper means to insure that the rights of all persons involved are protected while, at the same time, legitimate foreign intelligence activities are not impeded.

Over the years, foreign intelligence electronic surveillances have been conducted at the discretion of executive branch officials. As this House is all too aware, this arrangement has not prevented serious abuse from occurring.

It has been argued that all of these abuses, though unfortunate and indefensible, are now past history. It is further argued that the current guidelines imposed by former Attorney General Levi and refined by Attorney General Bell effectively preclude any recurrence of past abuses.

And so, this argument goes, there is no need to establish a procedure calling for issuance of a judicial warrant before a foreign intelligence electronic surveillance can take place.

The short answer here—in behalf of the warrant approach—is that administrations come, and administrations go. Guidelines are written and they are revoked. The Department of Justice may not always be led by men and women of character and integrity who are dedicated to the preservation of fourth amendment rights.

The American people—for good reason—have over the years been skeptical about the commitment of the executive branch of Government to honor their individual liberties and personal rights. By contrast, the people have demonstrated a strong faith in the ability and willingness of the judicial branch to protect these cherished rights.

The American people, in my judgment, will more readily support a national program or foreign intelligence electronic surveillance if they know that no surveillance can take place unless a neutral, detached magistrate has studied the case and found that the detailed statutory standards for a surveillance have been met.

H.R. 7308 does not protect non-U.S. persons and foreign agents from intelligence surveillances conducted in the United States. Nor does this warrant protection impede necessary intelligence-gathering activities.

H.R. 7308 carefully distinguishes between surveillances. It requires that the judge make fewer specific findings and receive less information from those officials requesting the warrant in the former case than in the later cases.

Others of our colleagues, Mr. Chairman, have argued against the warrant requirement saying it would lead to a wholesale intrusion of the judiciary into the day-to-day operation of the intelligence agencies.

With all due respect, this is simply not the case.

As H.R. 7308 and the committee report accompanying it make abundantly clear, the judges of the special court established to hear applications for foreign intelligence electronic surveillance warrants will be engaged in a traditional judicial function: Examining a set of facts against a statutory framework and then deciding whether the law allows or disallows the action sought.

No special expertise in intelligence matters is expected or required of the special court. Furthermore, no lawful intelligence activities will be endangered by leaks under H.R. 7308.

Some of our colleagues, in opposing H.R. 7308, profess to favor a warrant requirement where a U.S. citizen is the subject of an electronic surveillance, but to oppose such a warrant where non-American citizens, diplomats, foreign embassies, and the like are targeted for a foreign intelligence surveillance.

Mr. Chairman, I suggest that these colleagues read the report of the Church committee. This report is replete with instances where U.S. Presidents—of both party affiliations—have used embassy surveillances as a pretext to acquire political and personal information about U.S. citizens.

The judicial warrant requirement established in H.R. 7308 insures that any future foreign embassy surveillance will be only for the purpose of obtaining foreign intelligence information necessary to the security of our Nation.

Furthermore, the judge, before issuing the warrant authorizing a surveillance, has to review and approve proposed minimization procedures. These are procedures designed to minimize the likelihood that conversations of U.S. persons will be intercepted. If they are intercepted, the minimization procedures assure that such information will be utilized for no other purpose than for its foreign intelligence mission.

Under H.R. 7308, individual intelligence agents will know to the letter what is required of them. They will know that what they do pursuant to a warrant is lawful. And, they will be protected in the future against criminal prosecutions and civil suits arising from the surveillance as long as they do not exceed their lawful authority.

Another objection raised against the warrant provision is that it poses harm to the national security.

The harm, it is argued, could result in two ways: Intelligence activities could be impeded because of redtape and court delays; and, the court procedures established under H.R. 7308 could result in unintentional disclosure of sensitive intelligence information.

The House Intelligence Committee subjected both of these concerns to lengthy and detailed inquiry.

The committee concluded on the basis of testimony of members of the intelligence community that H.R. 7308 will not impede or unduly complicate foreign intelligence gathering. There will be no excessive redtape.

As to the second situation—the danger of disclosure and leaks of sensitive information—most of the intelligence community's concerns have been received by the committee's decision to exempt from the warrant requirement two particular sensitive types of surveillance.

However, it cannot be denied that under H.R. 7308 a judge will be involved in the surveillance process where none is today. There is risk here, but is the risk manageable?

First, an application for a warrant to surveil is made to but one judge. At the time the application is made, a large number of executive branch personnel will necessarily already know the details of the proposed surveillance.

Information to but one additional person seems an acceptable risk in view of the protection the warrant process offers to the American people and to the intelligence field agent.

Second, judges are constantly exposed to sensitive and volatile information. They have not, as a class, abused the trust placed in them. I doubt they would show themselves unworthy to handle sensitive intelligence information.

Also, the bill directs the special court to adopt security procedures for handling the sensitive information provided to it under H.R. 7308. These procedures will be instituted in consultation with the Attorney General and the Director of Central Intelligence.

The bill also makes clear that such security procedures may include the use of executive branch personnel—already cleared to handle secret material—to perform clerical duties for the court. This would minimize the danger of leaks of sensitive material.

Also, it is contemplated that sensitive intelligence material will be stored for the court in facilities maintained by cleared executive branch personnel.

Furthermore, the Attorney General, the Director of Central Intelligence, the Director of the National Security Agency, and the Director of the Federal Bureau of Investigation have all actively participated in the drafting of H.R. 7308. They all urge that it be passed.

These officials—charged with the singularly important mission of protecting the security of the country—would not support H.R. 7308 if they felt its warrant procedure would jeopardize national security.

In summary, Mr. Chairman, H.R. 7308 is good legislation.

It protects the constitutional rights of American citizens and the legitimate rights of all individuals. It does not obstruct or impede necessary foreign intelligence collection activities.

It will enhance the effectiveness of the intelligence field agent, who, in most cases, under H.R. 7308, will have a court order to guide the agent's actions which today is not available.

And, it should restore the public's confidence in the intelligence community since no U.S. person can be subjected to foreign intelligence electronic surveillance unless a judge has previously found probable cause that the individual is involved—or may be involved—in a criminal activity.

Admittedly, H.R. 7308 is a compromise bill. Any legislation that can bring together two administrations of differing political philosophies, three congressional committees, the intelligence community and most of its critics must be the product of compromise and adjustment. Thus, not every provision will be supported with equal vigor by each interested party.

As my supplemental views to the committee report note, I voted against the amendment adopted by the committee which exempted certain intelligence activities from the judicial warrant process.

I remain convinced of the necessity and realism of an across-the-board warrant in foreign intelligence electronic surveillance.

But, I am equally convinced that H.R. 7308 should not be opposed because it is imperfect by my standard. It is still a bill which deserves the House's strong support.

In closing, Mr. Chairman, let me quote briefly two strong supporters of the judicial warrant procedure for authorizing foreign intelligence electronic surveillance.

Senator BIRCH BAYH, chairman of the Senate Intelligence Committee, said on the Senate floor when H.R. 7308's counterpart, S. 1566, was adopted by a vote of 95 to 1:

> The bill before the Senate today . . . is the first major intelligence reform measure to be considered by the Congress. It will bring an end to the practice of electronic surveillance by the executive branch without a court order in the United States. It establishes standards for issuing court orders that reconcile the interests of personal privacy and national security in a way that is fully consistent with the fundamental principles of the fourth amendment and due process of law.

Senator JAKE GARN was quoted on the same occasion:

> Some have wondered what a conservative Senator such as myself was doing co-sponsoring what they thought was a liberal bill. The answer is quite simple. This is not a liberal bill. It is neither a Democratic nor a Republican bill. The tasks of balancing cherished constitutional liberties with increasingly threatened national security needs is too important to be left to partisanship.

Mr. KASTENMEIER. Mr. Chairman, I yield such time as he may consume to the distinguished chairman of the Committee on the Judiciary, the gentleman from New Jersey (Mr. RODINO).

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Chairman, as the sponsor of H.R. 7308 I strongly urge its enactment. The bill was officially reported by the permanent Select Committee on Intelligence. And it reflects the thinking of a great many individuals other than the membership of that committee. It is important that we pass it now.

To begin with H.R. 7308 in its present form is largely a product of the previous administration. I originally introduced the bill during the 94th Congress following a request from the Ford administration to do so. Since that original introduction the legislation has been further scrutinized and refined. Not one change was made in either the Senate, which has already passed the bill by a vote of 95 to 1, or by the House Intelligence Committee without consultation and approval by the FBI, the CIA and the NSA. Furthermore, the American Civil Liberties Union has endorsed the bill.

The measure is also supported by working agents in the field. I have received a letter of endorsement from the association of Federal investigators which attests to this fact. Perhaps one reason such divergent groups have united in strong common support of this bill is because its enactment is necessary to the continued security of our Nation. This legislation will remove the mist of uncertainty which envelops so much of our intelligence collection activity today and provide to intelligence professionals the guidelines they need to do their job properly. In addition, it will assure Americans generally that we in Congress have acted to assure that the resources of the Nation's intelligence agencies will be used ethically and in a manner which will not threaten their basic liberties. The bill was closely scrutinized by the Kastenmeier subcommittee. Given the sensitive and complex nature of the subject matter of H.R. 7308, I honestly believe that it would not be appropriate to amend it on the floor. When amendments are considered, I hope they will be resisted and the bill will be passed as reported.

Mr. MCCLORY. Mr. Chairman, will the gentleman yield to me?

Mr. RODINO. I yield to the gentleman from Illinois.

Mr. MCCLORY. I thank the gentleman for yielding.

As the ranking minority member on the gentleman's committee, I joined and applauded the gentleman when he communicated with the Speaker advising that it was inappropriate to bypass the Committee on the Judiciary with regard to important legislation. I notice that this bill of which the gentleman is the principal sponsor was referred to our committee, and yet it was never considered by our committee in formal session. With the very serious constitutional and legal questions that are involved, and the many implications that are involved, the court decisions upon which various provisions of the bill depend, it seems to me so entirely inconsistent with the gentleman's position upholding the prerogatives of our committee that he would not have wanted a markup session by our committee on this legislation, and does not want the bill to be amended now on the floor of the House.

Mr. RODINO. I would respond to the gentleman by reminding him that this legislation had been under study by the subcommittee, chaired by the gentleman from Wisconsin (Mr. KASTENMEIER) for a period of time, and that when the legislation was referred to the Committee on the Judiciary, we considered it because of the urgency of the matter, and we considered it important to get the bill to the floor because we felt that the matter had been studied very carefully. We consulted with the gentleman who is now on his feet speaking. There were hearings at the time, and by a vote of 4 to 3 the subcommittee decided to table any further requests for hearings or for any action that

would prevent the expedition of the legislation. We decided by that vote to come to the floor with the work which had been the handiwork and fine work of the Intelligence Committee. I believe that this is what we have now.

Mr. McCLORY. If the gentleman will yield further, I do acknowledge that there were hearings, but there was no consideration given by the committee. It was not reviewed in a markup session.

Mr. RODINO. I believe the subcommittee vote speaks for itself—the subcommittee of the Judiciary Committee—by a vote of 4 to 3 to table any further action.

Mr. McCLORY. If the gentleman will yield further, those who supported the motion to table the bill expressed themselves in strong opposition to the bill, so the bill does rest in the committee right now.

Mr. RODINO. Mr. Chairman, I might say to the gentleman that had those Members decided that they wanted to review the matter any further, they would have voted otherwise.

We must remember that the Committee on the Judiciary does retain its oversight responsibility, and, therefore, we will be able to continue to do what is necessary in order to insure the best interests of our country. But I just wanted to point out that had those Members had any special concern, they would have voted otherwise.

Mr. McCLORY. Mr. Chairman, if the gentleman will yield, let me ask, is there any provision in the bill that says the Committee on the Judiciary shall have oversight?

Mr. RODINO. Mr. Chairman, the Attorney General, when he appeared before the committee, stated expressly and succinctly that the responsibility for oversight would still be with the Committee on the Judiciary.

Mr. McCLORY. Mr. Chairman, if the gentleman will yield further, the report does not include any provisions as to reporting to the Committee on the Judiciary.

Mr. RODINO. Mr. Chairman, I would also add that in view of the inherent jurisdiction of the Committee on the Judiciary, we are protected by the Rules of the House, and we will retain our oversight and legislative responsibility under rule X.

Mr. SANTINI. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Nevada.

Mr. SANTINI. Mr. Chairman, with reference to the gentleman's expressed concern about the disposition of the subcommittee, I think the gentleman's question is a valid one. It is a question I asked myself before making the decision on the subcommittee to support the position of the chairman, and if we had not done that at that time, I think the gentleman well appreciates that this legislation to all rational intents and purposes would be dead.

If the objective is to kill the legislation, we could then have protected its consideration in the full committee. The full committee consideration would have, I think, by any reasonable assessment killed the bill. There simply is not the legislative time remaining in order to get this bill through the full Committee on the Judiciary and to the House floor for consideration.

Mr. Chairman, if the gentleman will yield further, at that juncture I made a particular point of phoning representatives of the FBI and asking them this question:

> We are now postured at this juncture of either killing the bill or, as an alternative, passing over full consideration by the Committee on the Judiciary and getting it to the House floor for consideration. What is your preference as a representative of the entity which is going to be most emphatically and dramatically impacted by the legislation?

The answer to my question was, emphatically, to "get that bill to the House floor as rapidly as you can. We need this bill as an investigative entity."

They are in a no man's land—excuse me, I should say, no person's land—and they do not know which way to turn or how to get there. The critical issues of national intelligence are being abandoned through the emasculation of inaction and the situation they are placed in.

The answer I got was this: "We have to have that legislation if we are to act and aggressively do the job that is assigned to us."

Mr. RODINO. Mr. Chairman, I want to thank the gentleman for his remarks. The gentleman serves on the committee, and I believe he has made a valuable contribution. He has stated the case clearly, and I think there is nothing more I can add.

Mr. Chairman, I yeld back the balance of my time.

The CHAIRMAN. The time of the gentleman from Wisconsin (Mr. KASTENMEIER) has expired.

Mr. McCLORY. Mr. Chairman, I yield myself such time as I may consume.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Chairman, I take this time merely for the purpose of making this statement: It was more than 6 weeks ago that this matter was before the Committee on the Judiciary of the House.

There was ample time for the Committee on the Judiciary to consider this legislation, to consider all these complex legal and constitutional questions, and to bring a measure to the floor which would not be in this kind of a confused state as we now find this legislation in.

As a matter of fact, it was represented to us that if the measure was brought to the floor, we would be able to amend it on the floor; yet the chairman of the full Committee on the Judiciary now states he wants this measure passed without amendment. So we are not only denying ourselves the opportunity in the Subcommittee of the Committee on the Judiciary and in the full committee of providing amendments to this legislation, but now we are denying ourselves the opportunity on the floor of the House to entertain amendments. It seems to me that is a tremendous disservice to our committee and to the Members of the House.

Mr. Chairman, I now yield 5 minutes to the gentleman from Massachusetts (Mr. DRINAN).

(Mr. DRINAN asked and was given permission to revise and extend his remarks.)

Mr. DRINAN. Mr. Chairman, I rise very diffidently and feeling very much alone in opposition to this bill. I share the misgivings just expressed by the gentleman from Illinois (Mr. McCLORY) that this is being pushed through without having thought the thing through. In fact, the pressure is almost unbelievable, because people think that we have to do something about the abuses.

But everybody here is very uneasy. Mr. Chairman, I have listened very carefully. everyone is suspicious that this is not the way to go about it. And I think that they suspect, as I know, that this is a capitulation to things that we really should not be doing.

The basic assumption, today is that wiretapping yields information indispensable to the protection of our national security.

I have served on the committee chaired by the gentleman from Wisconsin (Mr. KASTENMEIER) for 7 years and I have relentlessly asked people to give information that would prove that assumption. But that is the unproven assumption today.

This bill will legalize useless wiretapping. It will erode the fourth amendment. It will institutionalize the Nation's worst xenophobic prejudices. The CIA can now get a warrant if there is any probable cause of crime. But in view of the determination of the CIA and the FBI and the intelligence community to go on with their warrantless surveillances, somehow people have come to the conclusion that we will offer them an unorthodox warrant. It is called a "funny" warrant. It is not really a warrant. It is not a "case or controversy." It is an abuse of the Constitution. We pretend that this is going to bring control. The warrant that judges cannot refuse will not clean up surveillances that we cannot control.

H.R. 7308 does three bad things. It imposes duties on Federal courts totally at variance with anything that we know as a "case or controversy." This is an alteration of something very fundamental. Likewise, we will have something that is very foreign to our courts; namely, secret decisions.

Second, H.R. 7308 contains no requirement that Americans whose conversations are unavoidably recorded need be informed of that massive invasion of their privacy.

Third, H.R. 7308 violates the Vienna treaty, solmnly ratified by the Senate. That treaty guarantees that diplomatic offices are to be "inviolable."

Mr. Chairman, I will offer some amendments at the appropriate time, one on behalf of the telephone industry that does not want to have its agents or any Americans compelled to deal in the

clandestine wiretapping that under the bill they will be required to do.

I will also propose a sunset provision of 5 years so that when we understand that what this frightening experiment on our civil liberties really will do, we will have the opportunity, in fact we will be required, to put into effect this sunset provision.

Even if those two amendments and other amendments are adopted, Mr. Chairman, I feel very strongly that this bill will be a self-inflicted wound and a capitulation to the imperious and unjustified demands of the CIA and the intelligence community.

H.R. 7308 has a number of serious defects and is far from the "model wiretap bill" as the New York Times asserted in its editorial of June 29. It permits surveillance of Americans, in certain circumstances, without a court order. It does not contain adequate safeguards to minimize the acquisition of the conversations of innocent people. It requires telephone company employees, custodians, landlords, and others to assist, against their wills, the CIA, the FBI, and other agencies which are engaging in electronic surveillance. And it gives no notice to persons who are overheard that their conversations have been recorded.

Since 1968, many observers have studied the matter of electronic surveillance very carefully. Among others, the Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice has conducted numerous hearings over the past several years. Indeed this subcommittee has successively examined the predecessors to H.R. 7308, beginning in 1976 with the Ford administration bill. We received testimony which was quite critical of the various proposals which have been before us. While proponents sought to discount such adverse comment, they have failed, in my judgment, to carry the burden of persuading us that this bill is needed. When the rights of Americans under the Fourth Amendment are at stake, the Congress should not readily agree to invade them without evidence of the most compelling nature. The advocates of this bill have not adduced testimony anywhere near that level. Based on that hearing record, as well as my experience as a teacher of constitutional law, I would, if given the opportunity, seek to amend H.R. 7308 to effectuate fully the protections of the fourth amendment.

(1) THE NEED FOR H.R. 7308

It is critical that the House not assume as correct any of the premises which undergird this bill. Each of the assumptions must be examined thoroughly and without any preconceived notions about the need for employing electronic surveillance to gather so-called foreign intelligence information. In testimony before the Judiciary Subcommittee, the Ford administration provided very little hard evidence of the necessity for this measure. Official representations, both in public and executive sessions, amounted to little more than generalities couched in terms of protecting the Nation from foreign attack. That is not a sufficient basis upon which to authorize the broad powers sought by the executive branch. The national experience and disclosures of the recent past show all too clearly that Presidents and Attorneys General have used national security as a pretext for snooping into the lawful activities of political opponents or persons perceived to pose a threat to their political security.

The House must weigh the value of and the need for intelligence information gathered from electronic surveillance against the intrusions into constitutionally protected rights, such as privacy, association, and speech. I continue to believe that any electronic surveillance, whether approved by a court or not, violates the Constitution because such interceptions of private conversations can never satisfy the particularity requirement of the fourth amendment. It should be recalled that, to obtain a warrant under the fourth amendment, the applicant must submit a sworn statement, "particularly describing the place to be searched, and the person and things to be seized." Invariably an application for a bug or a tap cannot be that specific; it cannot describe with particularity all the persons to be overheard and all the conversations to be recorded.

This is the real evil of electronic surveillance; it is indiscriminate. It brings within its scope conversations of the innocent as well as the allegedly guilty. It is this indiscriminate quality of electronic surveillance that is most to be feared. Even physical surveillance, which some find offensive, is a much more targeted intelligence gathering technique than electronic surveillance. At least physical observation is more or less restricted to the person who is the object of the Government's interest. Electronic surveillance does not have these inherent limitations. Minimization provisions, which attempt to reduce the unnecessary intrusions into privacy, are generally inadequate.

H.R. 7308 does not uniformly require a criminal standard of probable cause in order to obtain a surveillance authorization. That is its major deficiency, as many witnesses have testified. Indeed the Intelligence Committee frankly concedes that the purpose of the bill is to obtain intelligence information which is not of a criminal nature.

> Although there may be cases in which information acquired from a foreign intelligence surveillance will be used as evidence of a crime, there cases are expected to be relatively few in number, unlike chapter 119 interceptions [title III of the 1968 act], the very purpose of which is to obtain evidence of criminal activity. Committee Report at 60.

With that purpose clearly stated, it should come as no surprise that the fourth amendment probable cause standard is not applied to all cases under this bill. What should come as a surprise, though, is the major break with Fourth Amendment doctrine that H.R. 7308 would affect.

Indeed, in some respects, H.R. 7308, as reported by the Intelligence Committee, is less restrictive than the earlier bills. For example, the earlier version defined "agent of a foreign power" to include, among others:

> * * * any person who 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.

The bill, as amended by the Intelligence Committee, would insert the word "gathering" between "intelligence" and "activities," and would substitute the word "may" for "will." Insertion of the word "gathering" arguably narrows the scope of the section, but replacing "will" with "may" arguably broadens it.

There are, to be sure, other objections to H.R. 7308. The definitions of "foreign intelligence information" and "foreign power" are much too broad. For example, "foreign intelligence information" includes any "information with respect to a foreign power or foreign territory that relates to and, if concerning a United States person, is necessary to . . . the conduct of the foreign affairs of the United States." Section 101e(2)(B). That definition has virtually no limits. There are many topics of conversation which every Secretary of State would determine "relates" or is "necessary" to the conduct of foreign policy.

The definition of "foreign power" is also overly broad. It includes, among others, foreign governments, factions of foreign governments, foreign political parties, and foreign military forces. This means that a conversation between an American citizen and an officer or employee of a foreign political party is potentially a subject for surveillance. The reach of that section is far too expansive. The definition, in fact, raises the question whether the bill could be used to engage in surveillance involving so-called third country disputes which spill over into the United States. As I read the bill, the Attorney General could obtain a court order to overhear conversations of persons belonging to "a faction of a foreign nation" even though the subject matter only marginally related to the direct interests of the United States. In short, the critical definitions are too broad to be meaningful restrictions on the Attorney General's authority, either with or without a warrant, to engage in electronic surveillance.

Furthermore H.R. 7308 does not appear to require any criminal standard for agents of foreign governments who are not U.S. citizens or resident aliens. The bill would impose a criminal standard in some circumstances, but it would not impose one across-the-board. Consequently my criticism of earlier bills that they authorized surveillance without probable cause relating to criminal activity is equally applicable to H.R. 7308.

It should be noted in passing that the distinction drawn in H.R. 7308 between citizens and resident aliens on the one hand, and all other persons within the United States on the other has little constitutional support of which I am aware. The protections of the Fourth and Fifth Amendments, for example, extend to all persons, not merely citizens and resident aliens. See *Abel* v. *United States*, 362 U.S. 217 (1960). Many people in the United States are neither citizens, nor resident aliens, nor spies. Tourists, lecturers, business people, scholars, and many others

regularly visit this country for purposes unrelated to clandestine activity. As I understand the bill they would not receive the special protection which the proposal appears to give to citizens and resident aliens ("United States persons"). The committee report makes that very clear with respect to the minimization provisions, for example. It states that "only information concerning a United States person need be minimized." *Id.* at 57. This double standard is constitutionally unacceptable and represents the xenophobia of a by-gone day. In testimony before the Judiciary Subcommittee on May 22, 1975, former Secretary of State Dean Rusk attempted to draw a distinction between diplomatic personnel, who are immune from criminal prosecution, and all other U.S. residents. Although I reject that distinction also, it does have some greater logic than the distinctions drawn in H.R. 7308 between citizens and resident aliens and all other persons in the United States.

H.R. 7308 does not limit the use of overhead conversations which are unrelated to the purpose of the surveillance. In fact the bill expressly permits the use of such acquired information in a criminal prosecution regardless of the remoteness of the crime from the surveillance. Section 101(h)(3) of the bill authorizes

> * * * procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for the purpose of preventing the crime or enforcing the criminal law.

Thus evidence of crime, obtained accidentally through a foreign intelligence tap, may now be used to prosecute the hapless victim of the surveillance, even though she or he may not even have been the "target" of the surveillance.

When Government agents obtain incriminating evidence through electronic surveillance which is not intended for that purpose, and which may be totally unrelated to the alleged criminal activity, they should not be allowed to use it for prosecutorial purposes. Such "fruit of the forbidden tree" should not be available to prosecute the party for conduct which may not be even remotely connected to the object of the surveillance. This is especially true when it is considered that the criminal standard, where it does appear in these bills; is not uniformly required for obtaining a surveillance warrant in the first instance.

In this same vein, H.R. 7308 makes no provision for notifying innocent persons whose conversations have been recorded or overheard merely because, for example, they called the embassy of a foreign country for travel information. Any time these "foreign intelligence" taps result in the interception of conversation unrelated to the subject of the surveillance, the innocent victim should be notified, or the records destroyed, or both. The minimization provisions of H.R. 7308, as noted earlier, are not strong enough to insure the destruction of data or recordings which are worthless or unrelated to the purpose of the surveillance.

In this context, the bill should provide for a public advocate to protect the rights of innocent parties. Since H.R. 7308 authorizes ex parte applications to a special court and permits ex parte extensions of existing bugs or taps, some mechanism is necessary to protect the rights of third parties who are unwittingly caught in the Government's dragnet surveillance. If such an office were established, I would have greater confidence that the privacy of persons within the United States would be more fully secured.

A provision for a public advocate takes on added importance when the "renewal" features of H.R. 7308 are examined. The Government may seek an unlimited number of 90-day extensions for any surveillance authorized under the bill. Thus the intrusion into the privacy of persons in the United States could go on for years, without anyone knowing about it. In addition the bill also authorizes the Attorney General to approve emergency surveillance when a court order cannot be obtained in the needed period of time. The Attorney General must then submit the normal application to the judge within 24 hours. If the judge denies the application, the bill gives the court the discretion to notify the innocent victims of the initial 24-hour surveillance, but the Government, again at an ex parte proceeding, may request that such notice be postponed for 90 days (the original Levi bill had a 30-day provision). Thereafter, once more through an ex parte proceeding, the court is prohibited from serving notice if the Government has made a further showing of "good cause." This exception makes a mockery of the limited notice rule in emergency surveillance situations, and further supports the need for a public advocate to be present at all these ex parte hearings.

H.R. 7308 has been criticized because it assigns duties to the judiciary which are not within the traditional definition of "judicial power." The argument proceeds from the settled doctrine that article III of the Constitution restricts the exercise of judicial authority to "cases or controversies." The Supreme Court has explained that limitation as being based, in part, on the need "to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). If the application for a warrant is conducted in secret and without the presence of any opposing party, as is the case under H.R. 7308, how can this constitute a "case or controversy" within the meaning of the Constitution?

Proponents of this legislation contend that the warrant procedure under this bill is no different than the warrant procedure under title III of the 1968 act. Thus, they reason, that since the 1968 act is constitutional, so is H.R. 7308. First, it should be observed that, to my knowledge, the warrant procedures of the 1968 act have never been challenged on the ground that they do not present a case or controversy within the judicial power of the United States. Second, the warrant procedures in the 1968 act are different in critical aspects from the procedures in H.R. 7308.

The warrant process under title III is viewed as ancillary to another proceeding, the investigation and prosecution of crime. If the information obtained through the surveillance leads to a prosecution, the defendant will have the opportunity to challenge, in an adversarial context, the legality of the tap or bug. If the information does not lead to a criminal prosecution, the person who is the subject of the surveillance is notified and given the opportunity to contest the validity of the surveillance in a civil suit. In either case, the initial application for a warrant may be viewed as a part of the case or controversy, either civil or criminal, which ordinarily follows the granting of the surveillance authorization. This is not the case under H.R. 7308.

First, as noted earlier, H.R. 7308 is not designed to procure information in connection with any criminal proceeding. As the committee report notes:

> Although there may be cases in which information acquired from a foreign intelligence surveillance will be used as evidence of a crime, these cases are expected to be relatively few in number . . . *Id.* at 60.

Thus the person whose conversations have been overheard will not have the opportunity to contest the lawfulness of the surveillance in any criminal proceeding.

Second, the bill does not provide any notification to such persons, as title III of the 1968 act does. Thus the victim of unlawful surveillance under the bill may never know of the illegality. Even a blind request by a suspecting individual under the Freedom of Information Act will not determine whether the requesting person has been the subject of a foreign intelligence surveillance. Both the FOIA and the Privacy Act contain exemptions for records ordered by the executive branch "to be kept secret in the interest of national defense or foreign policy." 5 U.S.C. 552(b)(1). The Privacy Act contains a general exemption for the records of the CIA. As I read this bill, there is no way for an American citizen or any other person who has been the subject of an unlawful surveillance to find out about the illegality. The only barrier standing between the victim of illegal wiretapping or bugging and a warrant is the special courts created by H.R. 7308. And there is no subsequent check on the behavior of the courts or the Executive under this bill. In the absence of the procedures, contained in title III of the 1968 act, which ordinarily lead to a case or controversy. I think the argument that this bill raises serious questions under article III is substantial.

Apart from the constitutional contentions against the warrant procedures contained in this bill, I do not understand why the judges assigned to these special courts would not take offense at the duties and limitations imposed upon them. They are not free to examine all the evidence presented by the Attorney General as they are in the ordinary warrant application process under title III. Certain critical determinations of the Exceutive are reviewable only on a "clearly erroneous" standard. See section 105(a)(5) of H.R. 7308. All the materials submitted for their examinations, as well as the proceeding itself, are

wrapped in a great shroud of secrecy. It appears that even the court clerks, reporters, and other necessary support personnel will be executive branch employees with security clearances. Such procedures, I should have thought, would be a tremendous affront to the independence of the Judiciary, which is a hallmark of our system of democratic government. I would hope that the judges would reject the commission imposed upon them under this bill, just as their brethren did in the first days of the Republic when Congress sought to foist upon the Judiciary duties not within the "judicial power of the United States." See *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792).

It is said that the bill establishes legal standards for foreign intelligence surveillance which are better than current law. That is hardly persuasive, in part, for the same reason that we did not glorify Mussolini because he made the trains run on time. Improvement is fine, but at what price? When the myriad infirmities of H.R. 7308 are added together, what real advances have we made in protecting Fourth Amendment values? None, in my judgment. I fear the bill leaves us with a secret judicial proceeding conducted under the most secret circumstances to sanction current Executive practices to engage in electronic surveillance to gather foreign intelligence information. Only the self-restraint of the special judges, who should be offended by this imposition of nonjudicial duties, stands between the potential victim and unbridled administrative discretion. And the victim will, under this bill, never know that she or he has been the subject of this extraordinary proceeding to authorize Government agents to overhear conversations or intercept nonverbal communications. And that, it is said, is better than current law.

The Administration claims to support this bill with all its heart and soul, including those of the intelligence community. One has to question the sincerity of that commitment when current executive branch practices regarding surveillance are examined. If the Carter administration is four-square behind this bill, why has it not adopted each and every provision of it on an administrative basis? Surely it could have administratively adhered to the strictures of the bill without Congress enacting any legislation. That, at least, would have demonstrated the good faith of the executive branch's support for this bill. I suspect the administration has not done so simply because it thought Congress might begin at that point and impose greater restrictions. When one starts at such a low level of protection for privacy, which is the present state of executive branch practice, it is quite easy to make the case that H.R. 7308 is better than current law. But that hardly meets the argument that current practice is unauthorized and unconstitutional, and that the bill cotains similar deficiencies. In urging Congress to enact this law, the Administration really seeks to have us approve its dubious practices involving foreign intelligence surveillance. H.R. 7308 does more to sanction current practice than it does to impose new and sufficient protections for all persons within the jurisdiction of the United States against unwarranted intrusions into privacy and doubtfully legal use of electronic surveillance.

Finally I should add that unsupported appeals to "national security" should not determine whether H.R. 7308 or any other bill becomes public law. Our national security is adequately safeguarded through the use of other, less intrusive methods of gathering foreign intelligence information. After all, our country did survive prior to President Roosevelt's authorization of limited electronic surveillance for national security purposes. It should be remembered too that the liberty of the people is at least as important as the marginal increment in intelligence information which we acquire through the inherently indiscriminate method of electronic surveillance. As the District Judge in the Pentagon Papers case cogently observed:

> The security of the Nation is not at the ramparts alone. Security also lies in the value of our free institutions. 328 F. Supp. at 331.

An integral part of our free institutions is the security of the people from unwarranted intrusions by Government agents in their privacy, intrusions which H.R. 7308 would unnecessarily authorize. I will oppose enactment of H.R. 7308 and the unprecedented, unwarranted violations of our most cherished rights which it sanctions.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. DRINAN. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding.

Mr. Chairman, I want to commend the gentleman on the position he has taken. I do want to say, with regard to the intelligence activities that are taking place currently, they are in accordance with strict Presidential guidelines. We are not dealing in any no-man's land or no-person's land. If the suggestion of the gentleman is that intelligence activities or electronic surveillance are being withheld until we get this legislation through and from then on we are going to have open field day for unlimited electronic surveillance, I think it is a more horrendous experience that we are going through here today than if we had no legislation whatever. So I just think the arguments in support of this legislation just do not hold water at all.

Mr. DRINAN. Mr. Chairman, I agree with the gentleman.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. DRINAN. I yield to the gentleman from Illinois.

Mr. RAILSBACK. I thank the gentleman for yielding.

Mr. Chairman, what bothers me, in the absence of some statute, is that I am not at all convinced that what happened back in the later years of the Nixon administration, when there were certain wiretaps executed that were warrantless would be corrected.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. DRINAN) has expired.

Mr. McCLORY. Mr. Chairman, I yield 1 additional minute to the gentleman from Massachusetts (Mr. DRINAN).

Mr. RAILSBACK. If the gentleman will yield further, what really bothers me is that I am afraid that I do not know of any court decision that would rule it mandatory that there be a warrant in case of a wiretap where even an American citizen is engaged in foreign intelligence gathering. I think the gentleman in the well will agree with me that that in itself is bad. There is a need, at least to an extent, to correct what happened not too long ago.

Mr. DRINAN. I agree with the gentleman that reform is necessary. But this is not the way to bring about reform.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. DRINAN. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, just to answer the gentleman's question, if he remembers, the Supreme Court in the Keith case clearly indicated that Congress could provide for warrant applications for intelligence purposes in domestic surveillance, and that is all we are doing here.

Mr. McCLORY. Mr. Chairman, if the gentleman would yield further, we are not involved here today in domestic surveillance. What the Court said in the KEITH case is that they were not passing on the subject of foreign intelligence surveillance, which is what we are considering in this legislation.

Mr. DRINAN. Mr. Chairman, I yield back the balance of my time.

Mr. McCLORY. Mr. Chairman, I yield 4 minutes to the gentleman from Illinois (Mr. RAILSBACK).

(Mr. RAILSBACK asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. Mr. Chairman and members of the committee, I can understand why there is a great deal of controversy surrounding H.R. 7308, and I think it is very understandable. On this point I do want to make it very clear in pointing out that this is not this administration's particular initiative.

I remember when Attorney General Levi summoned us to the White House for a meeting with President Ford preparatory to introducing a bill that really was very similar to the legislation that we are considering. There are two major differences between the Ford-Levi bill and H.R. 7308. The Ford-Levi bill appeared to recognize the constitutionally inherent power of the President to authorize warrantless electronic surveillance under circumstances not contemplated by the bill.

A second difference between the two bills is that the standard for surveillance under H.R. 7308 utilizes kind of a quasi-criminal standard, while the Ford-Levi bill did not. But, a letter has been sent and received from the former president, Gerald Ford, that in effect endorsed H.R. 7308 in that it has the thrust of what the Ford administration endorsed.

In all likelihood, I will end up support-

ing the bill reported out by the Intelligence Committee, but at the same time I do want to voice my objection to the manner in which the bill was handled. Beginning in 1976 with the Ford administration bill, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of which I am a member, has successfully considered the predecessors to this particular bill. Most recently, on June 22, 1978, the subcommittee began a series of three hearings on the current bill.

It is clear that the subcommittee has carefully studied the issue of foreign intelligence surveillance. However, rather than utilizing their developed expertise, the subcommittee on June 29 voted by a margin of 4 to 3 to table H.R. 7308, and I happen to believe that that was a mistake. Inasmuch as that action was taken, I must disagree with the comments of the chairman of the full Committee on the Judiciary when he indicated that he thought there ought not to be any amendments considered on the floor of the House. I feel that way particularly because the subcommittee of the Judiciary Committee never marked up the bill, nor did we have a chance to introduce any amendments.

My feeling is that even though I may end up supporting this bill, even with some amendments, I think that the full House ought to have an opportunity to consider amendments that may be offered, and particularly those offered by members of the Judiciary Committee who have not had an opportunity in the committee this year to offer amendments.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. RAILSBACK. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. I did not say—I think the record bears me out—that the House ought not to consider these amendments.

Mr. RAILSBACK. I was talking about the comments of the chairman of the full committee, Chairman RODINO. As I understood Chairman RODINO, his position was that no amendments should be considered.

Maybe he said no amendments should be adopted, but in any event inasmuch as we precluded Judiciary Committee action, I would hope that on the floor Judiciary would have the opportunity to amend the bill.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. RAILSBACK) has expired.

Mr. KASTENMEIER. Mr. Chairman, would the gentleman from Illinois (Mr. MCCLORY) yield additional time, perhaps 1 minute to the gentleman from Illinois (Mr. RAILSBACK)?

Mr. MCCLORY. I yield 1 additional minute to the gentleman from Illinois (Mr. RAILSBACK).

Mr. KASTENMEIER. I asked the gentleman to yield the further time, because the gentleman was with me I believe when we went to the Rules Committee, and of course we contemplated an open rule and we contemplated the amendments being considered on the floor, and of course that is appropriate. I do not believe that I or the chairman of the full committee should be characterized as believing no amendments should be considered. We may believe that no amendments should be adopted, but certainly not that they should not be considered.

Mr. RAILSBACK. I understand what the chairman of the subcommittee was saying and I was not referring to the gentleman but rather to remarks I had heard earlier.

Let me express my hope that this does not become some kind of partisan issue. As has been pointed out, this at one time was a Republican initiative, although there have been some changes. But I hope all of us consider the bill on its merits and do not make it into any kind of partisan issue.

Mr. MCCLORY. The gentleman does not want it to become a partisan issue.

Mr. RAILSBACK. Yes. I do not want it to become a partisan issue and I hope that we should consider it to be a bipartisan issue.

Mr. MCCLORY. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania (Mr. ERTEL).

(Mr. ERTEL asked and was given permission to revise and extend his remarks).

Mr. ERTEL. Mr. Chairman, the basic concept of a civilized nation is the rule of law. This country is a civilized nation and we do believe in the rule of law.

The Judiciary Committee has honored that principle and has continued to work for the establishment of a viable court system in this Nation. It is obvious that the intelligence agencies have abused their privileges and their rights in accordance with the Constitution and they need to be corrected, but I do not believe that this bill as written will correct the abuses which we have seen in the intelligence community before.

What we are doing here is compromising what is basically the rule of law as established in this country for 200 years. We are compromising our Constitution. In this bill for the first time in the history of our Nation we are setting up a secret body of law which no person in this Nation will know about other than a very select few. Decisions will be made in secret and they will continue to be made in secret. There will be no exposure to the public, no way to review them. No one will know what has happened or how it took place.

In fact, in this bill we do not have substantive guidelines as to whether or not intelligence agencies can tap lines or enter houses or establish electronic bugs. All we have is a procedure, how they go to a secret court and get a warrant. We do not tell the court what basic standards they should apply. We say: "You make the decision based on the totality of circumstances," and we set out no guidelines when they shall issue the amount. We set out no standards whatsoever. But yet we are saying to the courts: "You issue an order allowing a tap or an intrusion into somebody's privacy," and we do not tell them what standards to apply.

In fact we say to the court: "You can modify an application." So what does a court have to do? The court at that point becomes the manager of our foreign intelligence operation because they have to know what our intelligence people are seeking, they have to look at it, they can consider it, and they can modify what they are doing through the minimization procedures. They become the managers of our foreign intelligence operations. They are not making judicial decisions.

I suggest to the Members that it is a compromise of our judiciary and our constitutional form of government. We have the obligation to set out the substantive guidelines—not the courts—and we have not done that.

Let us assume for the moment that one judge just issues all the orders that the intelligence community asks for and another may deny them. There are no set guidelines under which they perform. They do not write out why they grant a warrant. They do not set out any standards. They do not say why they allow them to be tapped.

What we have done, we have just established a procedure where we have sanctioned the activities of the intelligence community with a court order without any particular reason being given by the courts.

It seems to me we have compromised our judiciary, we have compromised our rule of law and in addition to that we have compromised the intelligence agency because we are setting up a special court, itself, in Washington, that is located in one spot. All of this information must be funneled through that court. If somebody wants to find out what our counterintelligence agency's efforts are, all they have to do is to penetrate that one court and they will then know our entire counterintelligence efforts in this country. If they can get one person inside that court then our entire counterintelligence efforts are compromised.

No one can be seriously content that to centralize all of our counterintelligence collecting information at one point is a sound policy—it is a bad policy.

It seems to me we would be better off in setting up statutory guidelines for an intelligence community when we allow intrusion into the affairs of American citizens, or anyone else, and that the executive can present it for oversight to our committee of the House instead of having the judiciary involved.

I thank the gentleman for yielding me this time.

Mr. MCCLORY. Mr. Chairman, I yield 5 minutes to the gentleman from Florida (Mr. SIKES).

(Mr. SIKES asked and was given permission to revise and extend his remarks.)

Mr. SIKES. Mr. Chairman, in Congress, we speak often about too much government, about overlapping Federal agencies, about additional layers of bureaucracy, about redtape, regulations, and form filling. We say we are opposed to all of them and just about every day we pass new legislation that adds to each of these things we call objectionable.

I think that is exactly what will happen if H.R. 7308 is passed today. A surprising amount of pressure has been brought on Congress in support of this bill from the administration. I am puzzled by this situation. To me, the bill, beyond question, weakens America's intelligence gathering capabilities. It would dilute and slow down the process of using electronic means to gather, in the United States foreign intelligence information vital to our foreign policy and security interests. It would take away Presidential prerogative, based on sound constitutional principles, and establish a "special court." This special court would be made up of people of no particular training and background for deciding on foreign intelligence questions. Apparently, the judges would alternate in making decisions to authorize or refuse to authorize foreign intelligence electronic surveillance. We could have as many approaches and as many different viewpoints on propriety as there are judges.

Instead of this confusing approach, it would appear to me that abuses in the present system can be regulated by a set of strict guidelines mandating written authorization on the most senior members of the executive branch plus meaningful congressional oversight. Without question, there could be abuses through the operation of a special court just as readily, even more readily, than the abuses that are charged today.

This subject needs sensitive treatment, for we are dealing with important intelligence and counterintelligence activities which are vital to our foreign policy and security interests. The unprecedented injection of the courts is unnecessary and unwise, and it could very well unduly burden the legitimate activities of our intelligence agencies.

Under the guise of reform, this bill is an overreaction. In our zeal in today's world to overregulate, we would create a new agency and, in my opinion, the new procedure would further weaken intelligence gathering processes. They have already been seriously damaged by the drive to reveal every phase of intelligence operations in our country, to open all of our secrets to the press, and to make it more difficult for foreign nations to cooperate with the United States for fear that their own intelligence gathering operations would be compromised.

There is no other country which requires such judicial intervention before engaging in national security electronic surveillance. Our country does not need it.

In summary, as I understand the bill: It solves no known problems and corrects no known abuses; diminishes the effectiveness of intelligence; creates substantial new security hazards; does not establish new safeguards for the rights of Americans; injects the judiciary into foreign intelligence in a manner inconsistent with the Constitution as interpreted by the judiciary for over 100 years; establishes a special court which may be unconstitutional and requires a judicial warrant be based on a criminal standard when the purpose is to collect foreign intelligence.

Mr. McCLORY. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. BOLAND), the chairman of the Permanent Select Committee on Intelligence.

Mr. MURPHY of Illinois, Mr. Chairman, I yield an additional 3 minutes to the gentleman from Massachusetts (Mr. BOLAND).

The CHAIRMAN. The gentleman from Massachusetts (Mr. BOLAND) is recognized for 5 minutes.

(Mr. BOLAND asked and was given permission to revise and extend his remarks.)

Mr. BOLAND. Mr. Chairman, first of all I want to offer my congratulations to the distinguished gentleman from Illinois (Mr. MURPHY), the chairman of the legislative subcommittee of the Permanent Select Committee on Intelligence, and to the gentleman from Kentucky (Mr. MAZZOLI), who is another member of that subcommittee. I also wish to offer my congratulations to the gentleman from Illinois (Mr. MCCLORY), who is the ranking Republican member on that subcommittee, and, in fact, to all of the Members on both sides of the aisle who are on the Intelligence Subcommittee for the work they have been putting in, not alone on this bill, but on so many, many other matters that have come to the attention of that subcommittee, the many, many hours of briefing, the many, many hours of information which has been given to this committee, the many, many hours that all of the Members, all 13 Members, have spent in the Committee on Intelligence to insure that the kind of oversight which the Congress demands in this day and age is being obtained by the Congress. I think that is so. Therefore, I am grateful to all of the Members who have served here on this committee.

I know that none of the members of this committee and assuredly, the chairman of the subcommittee did not assume the task of chairing this committee lightly. I know that the members who served with me did not assume this task for the purpose of diluting the ability of our intelligence community to gather the kind of intelligence necessary to protect this Nation in the very difficult world in which we live. It is a difficult world. If we had a real world in which we were all angels, I imagine one could say that this particular piece of legislation would not be necessary.

Others have talked about the history of the legislation. It has been before the Congress now for a couple of years. The bill itself was finally offered in the Senate and the House after a ceremony at the White House which I attended along with a lot of other members of committees on both sides of the Capitol.

Mr. Chairman, I must say that my friend, the gentleman from Illinois, is perhaps the most consistent and the most persistent opponent of this bill of which we are aware, and that is good. I think he has brought to the attention not alone of the Permanent Select Committee on Intelligence, but of the House generally some of the problems that he sees in the bill itself.

Mr. Chairman, we have had a rather healthy discussion within the committee, and the gentleman from Illinois has had some very healthy discussions within the Committee on the Judiciary with respect to the matters that are being talked about today.

I am grateful for the contribution that the distinguished gentleman from Nevada (Mr. SANTINI) makes on what happened with respect to action within the Committee on the Judiciary itself. I think he is absolutely right. We never would have had this bill this year. It would have been death by delay; there is no doubt about it. The Senate has moved on this bill. The Senate passed it 95 to 1, and the only Member of the Senate to vote against it was the junior Senator from Virginia. So there is a broad consensus of support for the bill itself.

As my friend, the gentleman from Ohio (Mr. ASHBROOK) has indicated, I guess there is a broad consensus of opposition to it, too. He named some of the organizations that are opposed to it. He named an organization—I guess it is known as the Former Intelligence Officials. But, I think we have to look at that opposition to this bill vis-a-vis: those who are now serving as our current intelligence officials, those who really have the burden today, those who really have the job today of insuring that the kind of intelligence we collect will serve the best interests of the United States. I think they are the people we have to depend upon—their judgment of what this bill does or does not do.

Let me call to the attention of the members of this committee that this bill is supported—again, it has been said many times and I will say it again; it deserves repetition—by the Department of Justice, by the Attorney General of the United States. It is supported by the Director of the Federal Bureau of Investigation, Judge William Webster. It is supported by the Director of the Central Intelligence Agency, Admiral Turner. It has the complete support of perhaps the one official who is most involved in the collection of foreign intelligence, and that is the Director of the National Security Agency, Adm. Bobby Inman. Those are all the people who are concerned with the collection of foreign intelligence, and they are the people who support this bill.

I know my friend, the gentleman from Massachusetts, my colleague, opposes the bill, but he opposes electronic surveillance in any respect, so I do not agree that we have a strange collection of bedfellows here. All I am saying is that people who oppose the bill oppose it for different philosophical reasons.

The gentleman from Illinois (Mr. MCCLORY) opposes the bill because he does not want the judiciary in on determining whether or not warrants ought to be issued in these particular cases where we establish special courts to do it—11 judges picked from the 11 judicial districts throughout the United States who will be sitting here in Washington, who will be appointed by the Chief Justice of the United States and also the 6 members of the appeals court.

The gentleman from Illinois (Mr. MCCLORY) makes the point that no other nation in the world—no other nation in

the world—has a special court to consider this kind of a matter and this kind of a problem. May I just put an addendum to that by saying I do not know of any other nation in the world that has a bill of rights either. So we have the obligation here to protect not only the national security of the Nation itself; we have the obligation here of protecting the constitutional rights of the people who live within our borders, U.S. citizens and permanent resident aliens, and nobody could disagree with that.

Why is the bill here? It is here because it was supported by the Ford administration. President Ford supports this bill. It is supported by the Carter administration, supported by everyone who is connected with intelligence, at least on the part of Government officials who have anything to do with intelligence. All of the intelligence collectors who are now doing the job believe that the bill does not impact upon their ability and might very well insure the ability of those particular agencies to better collect intelligence because there will be offered to those who collect intelligence freedom from the fear that in collecting that intelligence where they do not have a warrant they will be subjected to lawsuits.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I will yield to the gentleman in a minute.

Mr. Chairman, I do not claim that this legislation satisfies every concern. I only claim that it is an exceedingly reasonable attempt to legitimize operations that have come under fire, to shield those who perform them, and to protect those who are innocently intercepted in the process. I believe that Senator JAKE GARN of Utah put it best when he spoke on the Senate floor on the day this bill's counterpart was passed in the Senate. If I may, I will quote his words.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. BOLAND) has expired.

Mr. McCLORY. Mr. Chairman, I yield 2 additional minutes to the gentleman from Massachusetts (Mr. BOLAND), and later I will ask him to yield to me.

Mr. BOLAND. Mr. Chairman, I will yield to the gentleman if he will just let me finish this first.

Here is what Senator GARN said:

> Some have wondered what a conservative Senator such as myself was doing cosponsoring what they thought was a liberal bill. The answer is quite simple. This is not a liberal bill, it is not a conservative bill, it is neither a Democratic nor a Republican bill.

And this, Mr. Chairman, I think, is the crux of his statement:

> The task of balancing cherished constitutional liberties with increasingly threatened national security needs is too important to be left to partisanship.

Mr. Chairman, I am glad at this time to yield to my friend, the gentleman from Illinois (Mr. McCLORY), who has done such a magnificent job in opposing this bill. I am delighted to yield to him.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding, and I appreciate the constitutional points he is making.

However, the fourth amendment, with regard to unreasonable searches and seizures, does not apply to foreign powers or foreign agents, and yet what the gentleman is suggesting in supporting this bill is that in regard to foreign agents and foreign powers, in order for us to engage in electronic eavesdropping in regard to those entities, we would require a judicial warrant.

It seems to me that what we are doing is we are providing something which is not constitutionally required and which is, I think, something that is constitutionally inimical to the citizens of the United States under our great Constitution and our great Bill of Rights.

Mr. BOLAND. Mr. Chairman, the gentleman is stating his opinion on the matter. That is not the opinion of a lot of others, including constitutional lawyers, in this Nation, but the gentleman has a right to state his opinion.

I might also state that when we were considering this bill in the markup—and it was not an easy task, as all the members of that subcommittee would agree—we did come to some agreement on what we ought to do with reference to changes that would be made in the Senate bill. The gentleman from Illinois (Mr. McCLORY) knows that he sat down with me and chatted with me, and one of the important amendments that we offered was one which would not require warrants to target foreign powers.

So, Mr. Chairman, this bill is in essence a better bill than the Senate bill, and I ask for its support by the members of this committee.

Mr. Chairman, much has been said about what this bill does and does not do. It is important to put this legislation in historical context.

President Ford first sponsored legislation which required a judicial warrant to perform foreign intelligence surveillances in 1976. His Attorney General, Edward Levi, worked closely with both House and Senate in drafting a bill which sought to balance national security concerns with protection for the civil liberties of Americans. Both the Senate Intelligence and Judiciary Committees favorably reported the Ford/Levi bill but the 94th Congress ended before it could be considered by the full Senate.

In the 95th Congress both committees again reported out the legislation and the Senate did act. It passed S. 1566, the companion bill to H.R. 7308, by a margin of 95 to 1. In the House, the Permanent Select Committee on Intelligence held 5 days of hearings of H.R. 7308. It went through an extended markup of the bill that included a briefing from Attorney General Bell, Admiral Turner, Director of Central Intelligence, Admiral Inman, Director of the National Security Agency, and Director Webster of the Federal Bureau of Investigation. Based on this briefing, the committee proceeded to final markup of H.R. 7308. The bill, as amended, is preferred by the administration over the Senate bill.

What does this bill do? Very simply, it authorizes the use of electronic surveillance in this country to collect foreign intelligence information. In all those cases where U.S. persons—that is, American citizens or permanent resident aliens—would be a communicant, a warrant is required. That approach is a simple and a straightforward one. It involves a basic policy choice—whether a judge or some executive branch official will authorize such surveillances. H.R. 7308 opts in favor of a disinterested third party using a process traditional to searches, and particularly intrusive electronic searches—that of a judicial warrant.

Nonetheless, the legislative package before us today is a complex one. The complexity results from trying to insure that the role judges play is limited to making findings of fact under statutory standards. Judges are insulated from foreign policy or political decisions. Further, the operation of the special court which will hear these warrant applications will be controlled under strict security procedures agreed upon by the Attorney General and the Director of Central Intelligence.

The bill's draftsmen, therefore, have gone to great lengths to provide a statutory basis for foreign intelligence electronic surveillance. Why is it necessary? There are two different and in some ways conflicting purposes that underlie H.R. 7308. The first grew out of the reports of the Church committee. The committee detailed the misuse of foreign intelligence surveillance in three areas. Between the period of 1967–1972, 1,200 Americans were targeted by NSA "watchlisting" activities. Regular biweekly reports, on the political opinions and activities of hundreds of prominent Americans—including Members of Congress—from FBI embassy wiretaps were provided to the President of the United States. Finally, dozens of FBI wiretaps were targeted at individual Americans, under the guise of national security, but for purely political or personal reasons. This record left a strong feeling in the country—and in this House—that legitimate foreign intelligence collection activities ought not to be prostituted like that again.

Since that time, as we all know, there has been an increased scrutiny of intelligence agencies and their activities. Civil suits and prosecutions have resulted. Agents are afraid—and rightly so in my view—to accept orders which they never would have questioned years ago. This hesitancy has reached the highest offices of this land and so today intelligence that perhaps should be collected is not. Even the Attorney General has been sued. Citizens are less willing to cooperate with their Government for the same reason.

All of these facts argue for legislation authorizing foreign intelligence surveillance. The committee agreed with the Carter administration—and the Ford administration—that a warrant ought to be required—because it would offer an impartial finder of fact, because it has been traditionally used in criminal electronic surveillance and the Government thus felt comfortable with it but principally because it was felt, that a judicial warrant would provide appropriate reassurance to Americans that

their Government would not spy on them indiscriminately as it had in the past.

The choice of a judicial warrant has provoked the opposition of the gentleman from Illinois (Mr. McCLORY). He is opposed to any involvement of the judiciary in foreign intelligence collection. His numerous amendments will make that point in many ways. He is joined in his opposition by others who oppose electronic surveillance of any kind, for whatever purpose. This combination of strange bedfellows, who oppose the bill for entirely opposite reasons, points out the difficult task that the committee has faced in considering H.R. 7308. It has sought in every case that middle ground where the interests of the national security ran parallel with those of individual privacy.

I do not claim that this legislation satisfies every concern. I only claim that it is an exceedingly reasonable attempt to legitimize operations that have come under fire, shield those who perform them and protect those who are innocently intercepted in the process.

I believe Senator JAKE GARN of Utah put it best when he spoke on the Senate floor the day this bill's counterpart was passed by the Senate 95 to 1. Here are his words:

Some have wondered what a conservative Senator such as myself was doing cosponsoring what they thought was a liberal bill. The answer is quite simple. This is not a liberal bill. It is not a conservative bill. It is neither a Democratic nor a Republican bill. The tasks of balancing cherished constitutional liberties with increasingly threatened national security needs is too important to be left to partisanship.

Senator BIRCH BAYH, chairman of the Senate Intelligence, also chose some appropriate words. He quoted James Madison in the Federalist Papers thusly:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which must be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Mr. Chairman, this legislation offers a reasonable, carefully considered approach to authorizing an essential intelligence gathering technique under conditions which help guarantee that it is properly used to gather foreign intelligence information and nothing else. I appeal to the commonsense of the members of this House to appreciate it for that and not any of the horrors that its opponents have conjured up for us.

Mr. McCLORY. Mr. Chairman, I yield 4 minutes to the gentleman from Ohio (Mr. ASHBROOK).

(Mr. ASHBROOK asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Chairman, I asked for this time although I had already spoken because the name of the former President of the United States has been brought up. I could not help but wonder which "Gerald Ford" they were referring to. I thought possibly somebody in that unique coalition got hold of his signature, because when I read that letter, I found it did not really square with what he had been saying before.

As a matter of fact, on Law Day at the University of South Carolina the President made this statement, and I think that anybody who knows much about it has to figure that when we make a speech, we come a lot closer to what we think than we do when somebody asks, "Will you send a letter supporting the bill?" and you say, "Yes." Here is what the former President of the United States said in a speech on March 17, 1978, when he was talking about this precise bill:

The current proposals to deal with national security wiretaps and other forms of electronic surveillance dealing with foreign threats is an excellent example.

There he is talking about judicial overkill.

The Carter Administration has asked the Congress to pass much of that responsibility to the courts. The conduct of foreign policy is not a judicial function. Moreover, after this responsibility is split, it will no longer be possible for the American people to hold the President, his political appointees, and any involved Members of Congress responsible for misdeeds in this area.

Mr. Chairman, I saw the letter that was referred to, and I know my colleague, the gentleman from Illinois, drafted a letter which I signed, to the President asking him in effect if he was somewhat taking leave of his senses. I just read what he originally said, and this is his original speech. Where the letter came from, I do not know.

We have also had Admiral Turner mentioned. I have been around a long time, and I know that Republican administrations sometimes put the heat on you, and I know that sometimes Democratic administrations put the heat on you. I know when someone under these pressures sends out signals. I believe Admiral Turner and Admiral Murphy both sent out signals to us.

Admiral Turner was saying he was for the bill, but let us listen to the signals he sent out. Here is what he said before our committee:

I have said before that there are certain risks associated with the statutory approaches in these two bills.

Those were the risks he was talking about and the signals he was sending.

The proliferation of sensitive information always involves risks—

And that is the point the gentleman from Pennsylvania was making—

and the statutory procedures will unquestionably lead to such a proliferation.

That was Signal 1 he was sending to us.

But on balance, I believe that the risks can be accepted.

That is another signal.

While compliance will be somewhat onerous—

That was a third signal he was sending—

I cannot say that any proper or necessary governmental purposes will be frustrated by these statutes or that vital intelligence having such value as to justify electronic surveillance as a method of collection will be lost.

He could not say the opposite so he put his positive statement in a negative stance. We all know what that illustrates.

That is about as much a signal as a person can send when he is under the restraint of a policy of his administration.

He told the Senate the same thing:

I cannot say to you flatly that there will not be such costs. It is possible, for example, that the bill's definitions of foreign intelligence information will prove to be too narrow—

There is a signal—

or will be too narrowly construed, to permit the acquisition of genuinely significant communications. It is likewise possible that justified warrant applications will be denied, or that the application papers will be mishandled and compromised. Those possibilities are difficult to measure, but they are risks. In the end, however, I think they are risks worth taking.

Mr. Chairman, let me point out again that is about as close to getting minimum support for a bill as you can get.

I am not being partisan. If Gerald Ford were in the White House and Mr. Levi were the Attorney General, we would be getting precisely the same kind of general talk.

They are sending signals that they really are not that much behind this legislation. Compromise, yes. Parts of the H.R. 7308 needed? Yes. The whole package? No.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. FOWLER).

(Mr. FOWLER asked and was given permission to revise and extend his remarks.)

Mr. FOWLER. Mr. Chairman, I rise today in strong support of H.R. 7308, the Foreign Intelligence Surveillance Act of 1978.

H.R. 7308 establishes statutory procedures to govern the use of electronic surveillance in the United States for foreign intelligence purposes. The bill contains specific and precise language detailing who may be monitored and under what circumstances, and sets forth long overdue procedures by which surveillances are to be authorized, approved and implemented.

This landmark legislation is the product of over 3 years of research, debate and refinement and has involved the criticism and cooperation of individuals representing a remarkable diversity of outlook and political philosophy, and including Presidents Ford and Carter, Attorneys General Levi and Bell, our intelligence agencies, and the American Civil Liberties Union.

This is as it should be, for the matters addressed by H.R. 7308 involve two of the most fundamental purposes of our Republic: to "provide for the common defense," and to "secure the blessings of liberty to ourselves and our posterity."

The fourth amendment to the Constitution clearly states that—

The right of the people to be secure in their persons, houses, papers and effects,

against unreasonable searches and seizures, shall not be violated.

In his dissent in the 1928 Olmstead case, Justice Brandeis termed this provision "the right to be let alone—the most comprehensive of rights and the right most valued by civilized man." We now know that this precious right has been infringed upon for almost 50 years by 9 different administrations, through the practice of domestic national security surveillances. The courts and the Congress have over the past 10 years moved to correct these abuses. In 1967, the Supreme Court ruled in the Katz case that the Fourth Amendment did apply to electronic surveillance, although the Court did not extend this finding to national security cases. In 1968, the Congress passed the Omnibus Crime Control and Safe Streets Act, which included a requirement for judicial authorization of elecrtonic monitoring for criminal investigations. Then, in the Keith case of 1972 the Supreme Court found that a warrant is required in domestic security surveillance cases.

H.R. 7308 represents continuation of this effort to bring electronic spying under the rule of law by requiring a judicial warrant for all electronic surveillance conducted in the United States for foreign intelligence purposes, when aliens are likely to be involved. It will insure that the constitutional rights of American citizens will not be swept aside, and disregarded, in the name of national security.

However, in addition to protecting individual rights, this legislation is also aimed at clearing up the legal uncertainty and ambiguity that has hampered U.S. intelligence gathering over the past few years. The bill provides, for the first time, legislative authorization and regulation of foreign intelligence electronic surveillance conducted within the United States. Ideally such intrusions into the lives of individuals would never be necessary, but we live in an imperfect world and we need a strong intelligence gathering capability in order to protect our country and our society against forces that seek to destroy them. Therefore, it is extremely significant that the directors of all U.S. intelligence agencies have vigorously supported H.R. 7308.

Thus, the Foreign Intelligence Surveillance Act of 1978 is designed to strike a balance between individual rights and liberties on the one hand and legitimate national security needs on the other. This legislation is necessarily the product of compromise and few people will be completely satisfied with its provisions; but, I am firmly convinced that it is sound legislation and that it well serves our national interests.

The two key principles of the bill are that a prior judicial warrant is required for all foreign intelligence surveillance in the United States, with narrow exceptions, and that a criminal standard is required in the issuance of warrants directed against U.S. citizens or permanent resident aliens.

The warrant requirement is waived only in three cases. First, the President, through the Attorney General, may authorize warrantless electronic surveillance when the surveillance is solely directed at—

(1) communications exclusively between or among foreign powers. . . ; or (ii) the acquisition of technical intelligence from property or premises under the open and exclusive control of a foreign power. . .

Second, the Attorney General may authorize the emergency employment of electronic surveillance under certain circumstances, but must obtain a warrant within 24 hours after the surveillance has begun. Finally, no warrant is required when the surveillance is to be undertaken to test equipment, train personnel, or detect unlawful electronic surveillance. In this case, the agency performing the warrantless surveillance must adhere to stringent rules to insure that no information concerning U.S. citizens or permanent resident aliens is improperly disseminated, used, or retained.

These limited exceptions were meant to provide the broadest possible protection of civil liberties without unduly damaging the ability of our intelligence agencies to obtain information vital to our national defense. In commenting on H.R. 7308, Admiral Turner of the CIA states:

I cannot say that any proper or necessary governmental purposes will be frustrated by the bill or that vital intelligence information, having such value as to justify electronic surveillance as a method of collection, will be lost. For these reasons I strongly urge that this legislation be enacted as soon as possible.

The criminal standard for surveillance of U.S. persons is perhaps the most controversial, and most important, of the provisions of H.R. 7308. Without it, the bill's attempt to protect the constitutional rights of Americans is largely meaningless. As the committee report states:

A citizen in the United States should be able to know that his government cannot invade his privacy with the most intrusive techniques if he conducts himself lawfully.

Yet this provision was not drawn up in a vacuum divorced from the real world. Foreign spies, be they American nationals or not, employ sophisticated techniques to avoid discovery and, therefore, it would be most difficult to meet an ordinary criminal standard in this area.

To resolve this difficulty, H.R. 7308 establishes a lesser standard for criminal conduct than the customary "probable cause that a crime is being committed." In order to fall under this revised criminal standard, a U.S. citizen or permanent resident alien would have to knowingly engage in: first, clandestine intelligence-gathering activities which do or may violate U.S. law; second, other clandestine intelligence activities which do or will violate U.S. law; third, sabotage or international terrorism; or fourth, aiding and abetting, or conspiring, with any other person engaged in such activities.

H.R. 7308 also establishes the methods for authorizing, approving and implementing foreign intelligence surveillance.

In all cases, other than the limited exceptions noted earlier, the Attorney General must make applications to a special court for a court order approving the use of electronic surveillance. Each application must include: the identity of the Federal officer making the application; Presidential authorization and Attorney General approval of the application; the identity of the target of the surveillance; a statement by the applicant of the factual and circumstantial basis for the belief that the target is a foreign power or agent of a foreign power and that the location to be monitored is being used by a foreign power or agent of a foreign power; the proposed time period for the surveillance; information concerning previous surveillance applications that involve the same persons, facilities, or places; and certification by a high-level executive branch official that the purpose of the surveillance is to obtain foreign intelligence information and that this information cannot be obtained by normal investigative techniques. Also, the application must contain a statement of the proposed procedures for minimizing the acquisition, retention and dissemination of information concerning U.S. persons consistent with our country's need for foreign intelligence information. Lastly, additional information is required concerning surveillance techniques and the communications to be monitored, with the extent of the information required dependent on the type of target to be surveilled.

To review and approve these applications, H.R. 7308 creates a special court in Washington, D.C., made up of at least one judge from each of the Federal judicial circuits and a special court of appeals composed of six Federal judges from the Washington, D.C., area.

One of the primary criticisms of this legislation is directed at the involvement of the judiciary in the field of foreign intelligence. However, the judicial role established by H.R. 7308 is the same as is alrady the case in criminal and domestic security warrant procedures. In approving any kind of surveillance, the court does not make substantive judgments or policy decisions as to the propriety or need for that surveillance. What the court does do is to decide whether the facts contained in a warrant application meet the statutory criteria required for the particular type of surveillance.

Enactment of H.R. 7308 would establish congressional standards for foreign intelligence surveillance defining what targets may be surveilled, what information requirements justify a surveillance, and what controls must be applied to the information obtained. Specifically, under this bill a judge may only rule on—

Whether probable cause exists that the target is a foreign power or foreign agent, as defined in the bill, and that the location to be monitored is being used by a foreign power or foreign agent;

Whether the proposals for minimizing the retention or distribution of information satisfy the statutory standards; and

In the case of U.S. persons, whether the executive branch certification that the information sought is foreign intelligence information is "clearly erroneous" or not.

Thus, the judiciary will be operating within well-defined legislative limits under the provisions of H.R. 7308. However,

if those limits prove to be inadequate, the Congress has the right, and the duty, to enact stronger and even more precise statutory standards.

Some observers have commented that the safeguards concerning foreign intelligence surveillance that have recently been established within the executive branch render this legislation unecessary. I would certainly acknowledge that these new procedures have substantially reduced the chances for abuse, but I would also point out that both the current administration and its predecessor have strongly endorsed legislative safeguards in this area. What is done by executive order can be undone by Executive order and we in the Congress have a responsibility, not only to ourselves as an institution but also to the people who sent us here, to fulfill our constitutional duty and to legislate national policy.

I urge the Members of this House to give H.R. 7308 a strong, and bipartisan, endorsement.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. ROSE).

(Mr. ROSE asked and was given permission to revise and extend his remarks.)

Mr. ROSE. Mr. Chairman, from all of the debate that we have heard here today, it might appear to some that we are about to require the intelligence community to go to this special court for the gathering of all its intelligence. That simply is not so. There is a great body of electronic intelligence information that is gathered constanty that will not come anywhere close to this legislation. And while I sincerely appreciate the concerns that have been expressed by those who oppose this legislation, I believe that the very strong arguments that have been made here today in support of what those charged with the responsibility of gathering this intelligence say they must have far outweighs the fears that some may have that this procedure may be cumbersome.

Mr. Chairman, I urge my colleagues to look at the fact that this bill is not the bill that passed the Senate 95 to 1.

With the great help of many of us on the committee, Mr. MCCLORY—and I at his side—we passed this bill with an amendment exempting, as the Senate did not do, the activities of the National Security Agency. Congressman MCCLORY alluded to that in his opening remarks here today. I wish we could describe in this place what has been excluded by that action. We cannot. I urge my colleagues to vote for this important legislation.

Mr. MURPHY of Illinois. Mr. Chairman, I yield 2 minutes to the gentleman from Nevada (Mr. SANTINI).

(Mr. SANTINI asked and was given permission to revise and extend his remarks.)

Mr. SANTINI. Mr. Chairman, I wish to speak briefly, since that is the inherent limitation of 120 seconds. I'll address the specific observations of the very able advocate from Ohio, Mr. ASHBROOK. He indicated that "signals" were being sent out. I can tell you that I have been on the receiving end of some of those signals. The signal is, "SOS." The signal is, "Help." And the signal is coming from the Director of the FBI.

They need this bill. They need this help. That is the signal that ultimately I think anyone, on balance, would find persuasive in responding to the concerns that have been so well expressed by some of those in opposition to this legislation.

I will quote now from the written SOS that was sent to me from William H. Webster, Director of the FBI.

The letter follows:

WASHINGTON, D.C.,
August 9, 1978.

Hon. JAMES SANTINI,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN SANTINI: This will confirm your conversation yesterday with Inspector John B. Hotis, concerning my position on H.R. 7308, the Foreign Intelligence Surveillance Act.

I would like you to know that I support the bill as reported by the Permanent Select Committee on Intelligence. I so testified in closed session before that Committee having personally studied the bill in-depth. The Agents of this Bureau involved in foreign intelligence activities deserve and need this legislation in order that they can be assured that both Congress and the courts have sanctioned the legality and propriety of their actions. I believe this bill represents a careful and workable balance between the vital interests of protecting the national security and civil liberties.

For your further information, I have attached a copy of a fact sheet prepared by the Department of Justice which outlines the purposes and general provisions of the bill. Should you have any questions about the bill as it affects the FBI, I or a member of my staff would welcome the opportunity to discuss the matter further.

Sincerely yours,

WILLIAM H. WEBSTER,
Director.

Now, it is my hope that we in this body will not find ourselves caught up in the understandable preoccupation with the nuances and ignore the tremendous nuisance that is present, because of the existing impaired climate, of investigation for the FBI and the CIA.

I pursued this question personally with Inspector John B. Hotis on the phone. I asked the question that has been raised here, "Are you simply responding to internal administrative heat that is generated within the executive departments day in and day out?"

He said:

I am not. I am responding personally to a very critical national need that the FBI must respond to in this country, our national security.

He urged:

I hope Congressman Santini will support this bill. Again, he stated this is both my personal conviction and the official position of the FBI.

Mr. RUDD. Mr. Chairman, will the gentleman yield?

Mr. SANTINI. I am happy to yield to the gentleman from Arizona, who I know distinguished himself in employment in this very agency in former times.

Mr. RUDD. I thank my very distinguished barrister from Nevada for yielding me this time.

Let me ask him this, if I may: In this bill, is it really thrusting a responsibility on the courts again? Are we abdicating our responsibilities to allow the courts to judge whether or not we should issue a warrant to assure the security of our Nation? And if that is a possibility—and I think it is true—if it is a possibility, does this then act as a buffer for the President of the United States, the Attorney General of the United States, who can then point their fingers at the court if something goes wrong, because the court did not have all the facts or was not schooled in intelligence? Is it to give them the responsibility for having something go wrong where otherwise that responsibility should really rest with the President and the Attorney General of the United States?

The CHAIRMAN. The time of the gentleman from Nevada has expired.

Mr. MCCLORY. Mr. Chairman, I yield 1 additional minute to the gentleman from Nevada.

Mr. SANTINI. The gentleman's question is a fair one. No one on this House floor at any time can answer that question unequivocally one way or the other. I would suggest that in this context I am willing to rest my hope and expectation and judgment in those who have the practical responsibility of implementing the national security needs of our Nation, the FBI, and CIA. They have the practical experience and the legislative duty to protect our Nation. In response to the gentleman's question, our investigation agencies need help. They are compelled to fulfill their duties in a confused and hazy legal environment. The Director of the FBI has turned to the Senate and the House with the plea, "Please help us," and I think this legislation is that help.

Mr. MCCLORY. Mr. Chairman, I yield myself 3 minutes.

I take this time because some very significant statements have been made particularly by the gentleman from South Carolina, who made reference to the fact that this bill is substantially different from that which was passed over in the Senate, and yet we are making statements here today that this is a desirable bill because it passed overwhelmingly and with only one negative vote, and yet the bill was so bad we undertook to amend it by agreement on both sides of the aisle, and I laud the majority for their support of this very extremely significant amendment.

The question I ask myself is this: Why if this exemption is so important to one of the intelligence agencies, why is this exemption not important to the other intelligence agencies? I think that is a very difficult question to answer, particularly when we are targeting in on a foreign power or foreign agent, whether it is by the FBI or CIA or NSA, or any other of the intelligence agencies. It seems to me an important question to ask if we are desiring to secure the national security through intelligence information—and most of it is information. Then it seems to me that the other intelligence agencies should have the

same exemption as the exemption we accorded to this one agency.

Let me say this: We have heard reference to the Post editorial this morning, and I think there is a great deal of misunderstanding about this. The Post editorial says this would enable 11 Federal judges to intervene before we begin any eavesdropping or wiretapping of American citizens in connection with national security. If that were the impact, if that were what this legislation were doing, I do not think I would be here opposing it.

What this legislation does is not to merely require a judicial warrant with respect to an American citizen. This bill requires a judicial warrant with respect to a foreign power, foreign entities, and foreign agents.

It seems to me if we want to provide for the protection of American citizens or U.S. persons—and that will be the subject of an amendment—then we will have the opportunity to protect U.S. persons against any electronic surveillance unless there is a warrant obtained.

But then I ask the question: Well, why do we need this new unprecedented special court arrangement? Do we need 11 judges gathered from all around the country in order to sit here in Washington, D.C., if we are only going to seek electronic surveillance intervention of a court with respect to U.S. persons?

It seems to me we should do the same as we do under title III and use the district court. There is nothing wrong with that. We do not need a special court. We can provide for protection of U.S. persons without the presence of this improvised court mechanism. Therefore, it seems to me the arguments made in support of this legislation just do not hold water insofar as U.S. persons or U.S. citizens are concerned.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Illinois. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. MINETA).

Mr. MINETA. Mr. Chairman, I rise to voice my full support for H.R. 7308, as reported by the House Permanent Select Committee on Intelligence, and to commend the chairman of the full committee, the chairman of the subcommittee, and my colleagues on the committee for their dedicated and statesmenlike work in crafting this importing legislation.

Though the legislative foundation for this bill was ably laid by the Subcommittee on Legislation, I and the other members of the full committee would have been remiss in our duty to the House and the country if we had not also subjected this bill to searching scrutiny.

In so doing, we conducted several days of markup over the period of a month. We heard from the heads of the intelligence agencies several times both in closed and open session. We were briefed by other interested parties.

As a result, we were able to perfect the already solid piece of legislation reported to us by the subcommittee.

The product of our efforts is now before us and it is deserving of our support.

Those officials charged with conducting our intelligence activities—Attorney General Bell, Admiral Turner, Admiral Murphy, Admiral Inman, Director Webster—say that the bill would help them conduct legitimate and necessary intelligence activities and poses no threat of harm to the national security. I take them at their word.

Of equal importance, the bill will protect the civil liberties of our citizens and prevent the recurrence of past abuses.

Before any American citizen or permanent resident alien can be subjected to electronic surveillance for national security reasons, a judge must find probable cause to believe that he is an agent of a foreign power engaged in clandestine intelligence activities, sabotage, or terrorism and that his activities are connected with a violation of the criminal statutes.

Before any information concerning an American citizen or permanent resident alien, derived from any foreign intelligence electronic surveillance, can be disseminated within or without the Government, or used for any purpose, such dissemination or use must be in conformity with procedures approved by a judge.

No longer will it be possible for 17 newsmen and Government employees to be wiretapped at the whim of executive officials.

No longer will the Executive be able to use an embassy surveillance as a pretext to collect political or personal information on Americans who communicate with an embassy.

And no longer will Americans find themselves on a hit list that insures that their international communications will be intercepted solely because they are engaging in antiwar activities.

Some may argue that, yes, these abuses did occur, and it is regrettable; but they are not occurring now, so, do we need any legislation?

To this, I would reply that the times and political climate will change again. That change may not come tomorrow, or next year, but it will come. It is to that time, 5, 10, 15 years from now, or whenever it might ever come, to which we must also address ourselves. There must be a check on the unbridled exercise of executive branch discretion—and the best check is a neutral and impartial magistrate applying congressionally enacted standards to executive requests for electronic surveillance orders.

The bill, of course, also addresses itself to the present time, and to the capability of the intelligence agencies to carry out their important functions.

At the present time, there is a considerable amount of needed intelligence not being collected.

It is not being collected because of the uncertainties of current law and the vagaries of the political climate. Intelligence officials and agents are constantly subjected to civil suits and held up to public scorn. What was legal one day is considered unconscionable the next. In such a climate, any sensible person would be chary of performing his duties aggressively.

Thus, it is time to settle that law relating to foreign intelligence electronic surveillance once and for all.

It is time to enact legislation that will state clearly what can be done and what cannot be done.

It is time to provide both our people and our intelligence agents with the protections a judicial warrant will afford them.

In conclusion, Mr. Chairman, I would say to my colleagues that the bill before the House today provides us with a unique opportunity to protect and further both our civil liberties and our national security.

The civil liberties groups support it. The administration supports it. The intelligence agencies enthusiastically support it. Such a consensus is rare in these times. This opportunity to enact good legislation should not be lost because of the unsupported claims of a few well-meaning individuals who seem to suggest that their knowledge and grasp of our intelligence collection activities exceed that of those intelligence community officials whose daily task it is to protect the security of our country.

I urge that H.R. 7308, as reported by the Select Committee on Intelligence, be passed.

Mr. McCLORY. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I have yielded myself this time because I want to respond to another charge that was made and that is that the FBI and the FBI agents need this legislation in order to protect themselves. Let me say we have pending before the Judiciary Committee the Federal Tort Claims Act Amendments which are intended to protect FBI agents and all intelligence agents, all intelligence officers, all law enforcement officers of the Federal Government, against actions that are brought against them where they are acting in good faith and within the scope of their authority. That is desirable legislation. As a matter of fact, that is inherent in the substitute bill that I have, as well, because it is true that we do need to translate the existing executive order guidelines into appropriate legislation.

Mr. Chairman, I would like to point out that when the Attorney General testified before our committee on January 10, 1978, he stated with respect to my substitute bill:

> I have nothing against Congressman McCLORY's bill. That would be an improvement over the present system. The question is do we want to bring the Judiciary in?

That is indeed the question, do we want to bring the Judiciary in, do we want to have the Judiciary act as interceptors between the authority that the executive has, in my view, the inherent power to exercise, and the exercise of that authority? Do we want to put that ultimate decisionmaking authority in the Judiciary and not in the executive where it has traditionally been?

I can assure the Members that the bill I am supporting, the substitute bill, would impose that responsibility on the executive. It would provide the kind of protection that we want, so that they can carry out these important intelligence activities.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCLORY. I yield myself 1 additional minute.

Mr. Chairman, I have yielded myself this additional time because I noticed that the gentleman from Virginia (Mr. ROBINSON) left the floor and did not have an opportunity to express himself in support of this legislation. However, I also want to point out that, as a member of the Committee on Intelligence, the gentleman from Virginia (Mr. ROBINSON) is in strong support of this legislation and, if present, he would be expressing himself, in his own way, in support of the measure and in opposition to the committee bill and in support of the substitute.

The CHAIRMAN. The time of the gentleman has again expired.

● Mr. WEISS. Mr. Chairman, for the benefit of our colleagues in their deliberations on H.R. 7308, the Foreign Intelligence Surveillance Act, I would like to share with them an article authored by our distinguished colleague, the gentleman from Massachusetts (Mr. DRINAN), which was printed in the September 1st Boston Globe.

The article follows:

[From the Boston Globe, Sept. 1, 1978]

WIRETAP BILL AN ATTACK ON FOREIGNERS

(By Robert F. Drinan)

On Thursday the US House of Representatives is expected to pass the Foreign Intelligence Surveillance Act (HR–7308). This bill will allow the CIA and the FBI to wiretap any agent of a foreign power with a warrant obtained from a federal judge on the contention that information from the wiretap would be helpful in formulating US foreign policy.

This measure, already passed by the Senate, is billed as a "reform" of the existing CIA practice of clandestinely wiretapping the Washington embassies of hostile nations. The introduction of the warrant requirement is deemed to be an improvement in a system of intelligence gathering alleged to be essential to national security.

The dismaying fact is, however, that the passage of HR-7308 will be a calamity. It will legalize largely useless wiretaps, erode the Fourth Amendment regulating the right of search and seizure and institutionalize the nation's worst xenophobic prejudices.

Proponents of the bill rely upon the unproven assumption that wiretapping yields information indispensable to the protection of our national security. No evidence has ever been offered to support this position in the extended hearings conducted over a period of three years by a House Judiciary subcommittee. When pressed for specifics, intelligence agents assert the sacredness of their secrets.

Confronted with this series of closed circles, those who want to control the appalling abuses of the intelligence agencies conclude that the agencies are determined to continue their surveillance and that therefore even an unorthodox warrant from a court offers some control of the frightening invasions of privacy which are now in place.

Even the American Civil Liberties Union, foe of all wiretapping before and after it was legalized for suspected criminals by Congress in 1968, has acquiesced in the specious and erroneous reasoning that somehow the establishment of secret court proceedings will control clandestine eavesdropping. And yet meaningless judicial warrant for a wiretap the grim fact is that the requirement of a will allow the CIA to deepen its refusal to talk by transferring the responsibility to the courts. At the same time the courts will cite the Draconian penalties in HR–7308 for judges who mention anything about their secret dealings with intelligence agents in their chambers.

Most civil libertarians in the Congress have capitulated to the delusion that warrants that judges cannot refuse will clean up surveillances we cannot control, and ironically most of the opposition to the very bad idea of involving a small number of federal judges in the legalization of tapping foreigners' phones comes from members of Congerss who feel that the President, the National Security Council and the CIA have inherent constitutional power to maintain our national security and that this power should not be limited by judicial restrictions.

The clamor for "reform" of the intelligence agencies has reached such a point of hysteria that most people do not recognize that HR-7308:

Imposes duties on federal courts totally at variance with the "case or controversy" always hitherto required for judicial intervention.

Contains no requirement that Americans whose conversations are unavoidably or inadvertently recorded be informed of the invasion of their privacy.

Violates the Vienna Treaty ratified by the Senate in which this nation pledged that diplomatic missions in this country would be "inviolable."

I will offer amendments to HR–7308 on the House floor. One amendment will support the request of the telephone industry for the deletion of a provision compelling communications employees to participate in arranging a clandestine wiretap. Another will propose a sunset provision so that this frightening experiment on our innermost thoughts will terminate after five years. As a House-Senate conferee. I will seek other ways to improve this bill.

Even if these amendments and improvement prevail, HR–7308 will still be a perversion of the Fourth Amendment, a radical departure from any established norm in American jurisprudence and an abject sellout by Congress and the Administration to the imperious and unjustifiable demands of the CIA and the FBI.●

● Mr. SEIBERLING. Mr. Chairman, I support the Intelligence Committee's bill and I commend the chairman (Mr. BOLAND) for developing a nexcellent compromise bill which protects individual rights without jeopardizing our legitimate national security interests in any way.

Just 2 years ago, I had the honor of serving as a member of the National Wiretap Commission. Several other members of the Commission and I tried in vain to get the Commission to review national security wiretap practices and procedures. The Intelligence Committee has now conducted just such a review and its conclusions support the views expressed in the National Wiretap Commission report by Mr. KASTENMEIER, Senator ABOUREZK, and me, along with Commissioner Alan F. Westin, who is perhaps the Nation's leading expert in the right of privacy. We made the following statement, which explains my support for the Intelligence Committee's bill:

"Security is like liberty," Supreme Court Justice Robert H. Jackson once wrote, "in that many crimes are committed in its name."

"National Security" wiretapping is probably the most easily abused area of electronic surveillance. The public records is replete with abuses during the period 1968–1974. . . .

Warrantless electronic surveillance cannot be constitutionally justified by a mere assertion of the magic words "national security," a vague phrase subject to differing interpretations. . . .

The record developed by the House Judiciary Committee during the impeachment proceedings is filled with evidence of abuses involving "national security" wiretaps against newsmen, against past and present employees of the National Security Council and against employees of the White House without access to NSC information. . . .

We support a warrant procedure for all electronic surveillance, including security wiretaps. We are not ready to say absolutely that the specific procedures to be followed should be the same in national security cases as in criminal investigations. But we do feel very strongly that there must be some system of accountability, with property checks and balances. As long as the President and his designees have absolute, unreviewabel discretion in this area, there will remain an unreasonable likelihood of abuse. Such a claim of unbridled power is inconsistent with the Constitution and the public interest.

Finally, we believe that national security wiretaps may be necessary in certain circumstances. We believe that the concept of national security, however, has been so abused by recent presidents tha tthe public has little confidence when a President claims an action—whether foreign or domestic—is based upon national security grounds. The best place to begin restoring public confidence, we believe, is in the area of electronic surveillance for national security purposes. Judicial security of national security wiretaps is, in our opinion, necessary from a constitutional standpoint and an appropriate way to restore public confidence in our governmental institutions.●

Mr. MURPHY of Illinois. Mr. Chairman, I have no additional requests for time.

The CHAIRMAN. Does the gentleman yield back the balance of his time?

Mr. MURPHY of Illinois. I do, Mr. Chairman.

The CHAIRMAN. Does the gentleman from Illinois (Mr. MCCLORY) yield back the balance of his time?

Mr. McCLORY. Yes, Mr. Chairman, I have no further requests for time.

The CHAIRMAN. All time has expired.

Pursuant to the rule, the Clerk will now read, by title, the substitute committee amendment recommended by the Permanent Select Committee on Intelligence now printed in the bill as an original bill for the purpose of amendment; said substitute shall be read for amendment by titles instead of by sections. No amendment to said substitute shall be in order except germane amendments printed in the CONGRESSIONAL RECORD at least 3 legislative days before their consideration, pro forma amendments for the purpose of debate, and amendments recommended by the Permanent Select Committee on Intelligence. It shall be in order to consider en bloc amendments to said substitute printed in the CONGRESSIONAL RECORD of July 17 by Representative MCCLORY of Illinois.

The Clerk will read.

H.R. 7308

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 1978".

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TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

DEFINITIONS

SEC. 101. As used in this title:

(a) "Foreign power" means—

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

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

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

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

(6) an entity that is directed and controlled by a foreign government or governments.

(b) "Agent of a foreign power" means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer, member, or employee of a foreign power; or

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

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

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life that are or may be a violation of the criminal laws of the United States or of any State, or that might involve a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) "Sabotage" means activities that involve or may involve a violation of chapter 105 of title 18, United States Code, or that might involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to and, if concerning a United States person, is necessary to the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to and, if concerning a United States person, is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) 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, if 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;

(2) 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, if such acquisition occurs in the United States;

(3) 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 if both the sender and all intended recipients are located within the United States; or

(4) 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.

(g) "Attorney General" means the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General.

(h) "Minimization procedures", with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition, retention, and dissemination of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1), shall not be disseminated in a manner that identifies any individual United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for the purpose of preventing the crime or enforcing the criminal law; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 102(a), procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than twenty-four hours unless a court order under section 105 is obtained or unless the Attorney General determines that the information may indicate a threat of death or serious bodily harm to any person.

(i) "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 does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

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

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 102 (a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) communications exclusively between or among foreign powers, as defined in section 101(a)(1), (2), or (3); or

(ii) the acquisition of technical intelligence from property or premises under the open and exclusive control of a foreign power, as defined in section 101(a)(1), (2), or (3); and

(B) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h); and

if the Attorney General shall report such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him.

(3) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) 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 carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the Special Court having jurisdiction under section 103, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 105, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the Special Court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) unless such surveillance may involve the acquisition of communications of any United States person.

SPECIAL COURTS

SEC. 103. (a) There is established a Special Court of the United States with jurisdiction throughout the United States to carry out the judicial duties of this title. The Chief Justice of the United States shall publicly designate at least one judge from each of the judicial circuits, nominated by the chief judges of the respective circuits, who shall be members of the Special Court and one of whom the Chief Justice shall publicly designate as the chief judge. The Special Court shall sit continuously in the District of Columbia.

(b) There is established a Special Court of Appeals with jurisdiction to hear appeals from decisions of the Special Court and any other matter assigned to it by this title. The Chief Justice shall publicly designate six judges, one of whom shall be publicly designated as the chief judge, from among judges nominated by the chief judges of the district courts of the District of Columbia, the Eastern District of Virginia and the District of Maryland, and the United States Court of Appeals for the District of Columbia, any three of whom shall constitute a panel for purposes of carrying out its duties under this title.

(c) The judges of the Special Court and the Special Court of Appeals shall be designated for six-year terms, except that the Chief Justice shall stagger the terms of the members originally chosen. No judge may serve more than two full terms.

(d) The chief judges of the Special Court and the Special Court of Appeals shall, in consultation with the Attorney General and the Director of Central Intelligence, establish such document, physical, personnel, or communications security measures as are necessary to protect information submitted to or produced by the Special Court or Special Court of Appeals from unauthorized disclosure.

(e) Proceedings under this title shall be conducted as expeditiously as possible. If any application to the Special Court is denied, the court shall record the reasons for that denial, and the reasons for that denial shall, upon the motion of the party to whom the application was denied, be transmitted under seal to the Special Court of Appeals.

(f) Decisions of the Special Court of Appeals shall be subject to review by the Supreme Court of the United States in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code, except that the Supreme Court may adopt special procedures with respect to security appropriate to the case.

(g) The Chief Judges of the Special Court and the Special Court of Appeals may, in consultation with the Attorney General and Director of Central Intelligence and consistent with subsection (d)—

(1) designate such officers or employees of the Government, as may be necessary, to serve as employees of the Special Court and Special Court of Appeals; and

(2) promulgate such rules or administrative procedures as may be necessary to the efficient functioning of the Special Court and Special Court of Appeals.

Any funds necessary to the operation of the Special Court and the Special Court of Appeals may be drawn from appropriations for the Department of Justice. The Department of Justice shall provide such fiscal and administrative services as may be necessary for the Special Court and Special Court of Appeals.

APPLICATION FOR AN ORDER

SEC. 104. (a) Each application for an order approving electronic surveillance under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 103. 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 title. It shall include—

(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, if known, 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) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(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 certifying official deems the information sought to be 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) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

(E) 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;

(8) a statement of the means by which the surveillance will be affected;

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

(10) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this title 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; and

(11) whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

(b) Whenever the target of the electronic surveillance is a foreign power, as defined in 101(a) (1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the application need not contain the information required by paragraphs (6), (7)(E), (8), and (11) of subsection (a), but shall contain such information about the surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

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

(d) The judge may require the applicant to furnish such other information as may be necessary to make the determination required by section 105.

ISSUANCE OF AN ORDER

SEC. 105. (a) Upon an application made pursuant to section 104, 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 applicants 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: Provided, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is 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 101(h); and

(5) the application which has been filed contains all statements and certifications required by section 104 and, if the target is a United States person, the certification or certifications are not clearly erronous on the basis of the statement made under section 104(a)(7)(E) and any other information furnished under section 104(d).

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

(1) specify—

(A) the identity, if known, or a description of the target of the electronic surveillance;

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

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected;

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

(F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; 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, 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, 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 that such person wishes to retain; and

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

(c) Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a)(1), (2), or (3), and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (b)(1), but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

(d)(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 101(a)(1), (2), or (3), for the period specified in the application or for one year, whichever is less.

Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that an extension of an order under this chapter for a surveillance targeted against a foreign power, as defined in section 101(a)(4), (5), or (6), may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period.

(3) At the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Notwithstanding any other provision of this title, 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 title to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge designated pursuant to section 103 is informed by the Attorney General or his designee 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 title is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic 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 and no order is issued approving the surveillance, 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, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information may indicate a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.

(f) Notwithstanding any other provision of this title, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment; and

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, United States Code, or section 605 of the Communications Act of 1934, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this title; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) Certifications made by the Attorney General pursuant to section 102(a) and applications made and orders granted under this title shall be retained in accordance with the security procedures established pursuant to section 103 for a period of at least ten years from the date of the application.

USE OF INFORMATION

SEC. 106. (a) Information acquired from an electronic surveillance conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this title shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, 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, regulatory body, or other authority of the United States, against an ag-

grieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, 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 that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to disclosed or used that the Government intends to so disclose or so use such information.

(d) Whenever any State or political subdivision thereof 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, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) Whenever a court or other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e) and the Government concedes that information obtained or derived from an electronic surveillance pursuant to the authority of this title as to which the moving party is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding, the Government may make a motion before the Special Court to determine the lawfulness of the electronic surveillance. Unless all the judges of the Special Court are so disqualified, the motion may not be heard by a judge who granted or denied an order or extension involving the surveillance at issue. Such motion shall stay any action in any court or authority to determine the lawfulness of the surveillance. In determining the lawfulness of the surveillance, the Special Court shall, notwithstanding any other law, if the Attorney General files an affidavit under oath with the Special Court that disclosure would harm the national security of the United States or compromise foreign intelligence sources and methods, review in camera the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the Special Court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials if there is a reasonable question as to the legality of the surveillance and if disclosure would likely promote a more accurate determination of such legality, or if such disclosure would not harm the national security.

(g) Except as provided in subsection (f), whenever any motion or request is made pursuant to any statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to surveillance pursuant to the authority of this title or to discover, obtain, or suppress any information obtained from electronic surveillance pursuant to the authority of this title, and the court or other authority determines that the moving party is an aggrieved person, if the Attorney General files with the Special Court of Appeals an affidavit under oath than an adversary hearing would harm the national security or compromise foreign intelligence sources and methods and that no information obtained or derived from an electronic surveillance pursuant to the authority of this title has been or is about to be used by the Government in the case before the court of other authority, the Special Court of Appeals shall, notwithstanding any other law, stay the proceeding before the other court or authority and review in camera and ex parte the application, order, and such other materials as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the Special Court of Appeals shall disclose, under appropriate security procedures and protective orders, to the aggrieved person or his attorney portions of the application, order, or other materials relating to the surveillance only if necessary to afford due process to the aggrieved person.

(h) If the Special Court pursuant to subsection (f) or the Special Court of Appeals pursuant to subsection (g) determines the surveillance was not lawfully authorized and conducted, it shall, in accordance with the requirements of the law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the Special Court pursuant to subsection (f) or the Special Court of Appeals pursuant to subsection (g) determines the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Orders granting or denying motions or requests under subsection (h), decisions under this section as to the lawfulness of electronic surveillance, and, absent a finding of unlawfulness, orders of the Special Court or Special Court of Appeals granting or denying disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except the Special Court of Appeals and the Supreme Court.

(j) In circumstances involving the unintentional 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 if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents may indicate a threat of death or serious bodily harm to any person.

(k) If an emergency employment of electronic surveillance is authorized under section 105(e) 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 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.

REPORT OF ELECTRONIC SURVEILLANCE

SEC. 107. In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title; and

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

CONGRESSIONAL OVERSIGHT

SEC. 108. On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all electronic surveillance under this title. Nothing in this title shall be deemed to limit the authority and responsibility of those committees to obtain such additional information as they may need to carry out their respective functions and duties.

PENALTIES

SEC. 109. (a) OFFENSE.—A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by statute; or

(2) violates section 102(a)(2), 105(e), 105(f), 105(g), 106(a), 106(b), or 106(j) or any court order issued pursuant to this title, knowing his conduct violates such an order or this title.

(b) DEFENSE.—(1) It is a defense to a prosecution under subsection (a)(1) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(2) It is a defense to a prosecution under subsection (a) (2) that the defendant acted in a good faith belief that his actions did not violate any provision of this title or any court order issued pursuant to this title, under circumstances where that belief was reasonable.

(c) PENALTY.—An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(d) JURISDICTION.—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

CIVIL LIABILITY

SEC. 110. CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101 (a) or (b)(1)(A), respectively, who has been subjected to an electronic surveillance or whose communication has been disseminated or used in violation of section 109 shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of $1,000 or $100 per

day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

Mr. McCLORY (during the reading). Mr. Chairman, I ask unanimous consent that title I be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

AMENDMENTS OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. McCLORY:

Page 39, strike out line 1 and all that follows down through line 12 on page 41 and insert in lieu thereof the following:

AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 102. (a) An application for a court order under this title is authorized if the President has, in writing, authorized the Attorney General to approve applications to the Special Court having jurisdiction under section 103. A judge to whom such an application is made may, notwithstanding any other law, grant an order in accordance with section 105 approving electronic surveillance of a United States person who is a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.

(b)(1) If the target of electronic surveillance for the purpose of obtaining foreign intelligence information is not a United States person, such electronic surveillance may be authorized by the issuance of a surveillance certificate in accordance with subsection (c).

(2) Electronic surveillance authorized under this subsection may be authorized for the period necessary to achieve its purpose, except that—

(A) if the target of the surveillance is not a foreign power, the period of the surveillance may not exceed ninety days; and

(B) if the target of the surveillance is a foreign power, the period of the surveillance may not exceed one year.

(3) Electronic surveillance authorized under this subsection may be reauthorized in the same manner as an original authorization, but all statements required to be made under subsection (c) for the initial issuance of a surveillance certificate shall be based on new findings.

(4)(A) Upon the issuance of a surveillance certificate under this subsection, the Attorney General may direct a specified communication common carrier—

(i) to furnish any information, facility, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect the secrecy of such surveillance and will produce a minimum of interference with the services that such common carrier provides its customers; and

(ii) to maintain any records concerning such surveillance or the assistance furnished by such common carrier that such common carrier wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligence.

(B) Any such direction by the Attorney General shall be in writing.

(C) The Government shall compensate any communication common carrier at the prevailing rate for assistance furnished by such common carrier pursuant to a direction of the Attorney General under this paragraph.

(c) A surveillance certificate issued under subsection (b)(1) shall be issued in writing and under oath by the Attorney General and an executive branch official or officials designated by the President from among those officials employed in the area of national security or national defense who were appointed by the President by and with the advice and consent of the Senate, and shall include—

(1) a statement—

(A) identifying or describing the target of the electronic surveillance, including a certification of whether or not the target is a foreign power or an agent of a foreign power; and

(B) certifying that each of the facilities or places at which the surveillance is directed is being used or may be used by a foreign power or an agent of a foreign power;

(2) a statement of the basis for the certification under paragraph (1)—

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

(B) that each of the facilities or places at which the surveillance is directed is being or may be used by a foreign power or an agent of a foreign power;

(3) a statement of the proposed minimization procedures;

(4) a statement that the information sought is foreign intelligence information;

(5) a statement that the purpose of the surveillance is to obtain foreign intelligence information;

(6) if the target of the surveillance is not a foreign power, a statement of the basis for the certification under paragraph (4) that the information sought is foreign intelligence information;

(7) a statement of the period of time for which the surveillance is required to be maintained;

(8) a statement of the means by which the surveillance will be effected;

(9) if the nature of the intelligence gathering is such that the approval of electronic surveillance under subsecion (b) should not automatically terminate when the described type of information has first been obtained, a statement of the facts indicating that additional information of the same type will be obtained thereafter;

(10) a statement indicating whether or not an emergency authorization was made under section 105(e); and

(11) if more than one electronic, mechanical, or other surveillance device is to be involved with respect to such surveillance, a statement specifying the types of devices involved, their coverage, and the minimization procedures that will apply to information acquired by each type of device.

Page 47, strike out lines 4 through 14 and redesignate the succeeding subsections accordingly.

Page 48, line 24, strike out ", if the target is a United States person,".

Page 52, strike out lines 11 and 12 and insert in lieu thereof the following:

(2) the factual basis exists for the authorization of such electronic surveillance;

Page 52, beginning on line 14, strike out "if a judge" and all that follows through the period on line 20 and insert in lieu thereof the following: "if the otherwise applicable procedures of this title are followed as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. In addition, if the target of such electronic surveillance is a United States person, the Attorney General or his designee shall at the time of such authorization inform a judge designated pursuant to section 103 that the decision has been made to employ emergency electronic surveillance.".

Page 52, beginning on line 23, strike out "for the issuance of a judicial order".

Page 52, line 24, insert "or surveillance certificate" after "a judicial order".

Page 53, line 5, strike out "such" and insert in lieu thereof "an".

Page 53, line 5, insert "or a surveillance certificate is not issued" after "approval is denied".

Page 53, line 6, insert "or surveillance certificate" after "order".

Page 59, line 3, strike out "application, order," and insert in lieu thereof "application and order or the surveillance certificate".

Page 59, line 18, strike out "applications or orders" and insert in lieu thereof "applications, orders, or surveillance certificates".

Page 60, line 8, strike out "application, order," and insert in lieu thereof "application and order or surveillance certificate".

Page 60, line 14, insert "surveillance certificate," after "order,".

Page 68, line 12, insert "or surveillance certificate" after "order".

Mr. McCLORY (during the reading). Mr. Chairman, I ask unanimous consent that the amendments, with specific reference to amendment No. 2, be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. McCLORY. Mr. Chairman, this, it seems to me, is a very key amendment. Further, it should provide an opportunity for this chamber and for the committee to really get at the crux of this legislation.

My amendment would modify the virtual across-the-board warrant requirement, which is the measure which was passed in the Senate and which some Members do support. Assuming for the moment the need to protect the rights of U.S. persons, as indicated in my colloquy with the gentleman from Masachusetts (Mr. BOLAND), the chairman of the committee, I have serious concern over the provision of the bill which extends a judicial warrant requirement beyond situations where U.S. persons are targeted.

While the argument has been made that warrants are needed in all situations in which U.S. persons are targeted or might be incidentally intercepted, I believe that the provisions in the bill which strictly regulate the use of incidentally acquired information about U.S. persons adequately protect the privacy interests of U.S. persons. Furthermore, the balance struck by requiring a warrant only for U.S. persons better recognizes the role of the executive to protect our country from foreign aggression without undue entanglement involving another branch of Government, that is, the judiciary.

My belief is that the warrant requirement should not be extended to electronic surveillance directed at foreigners, and this is based on two alternative grounds:

First, the fourth amendment does not apply to foreigners.

Second, assuming for purposes of argument, that the fourth amendment does apply to foreigners, it is constitutionally reasonable to engage in electronic surveillance of foreigners without a judicial warrant or without judicial approval.

The fourth amendment to the U.S. Constitution provides—

The right of the people to be secure . . . against unreasonable searches and seizures shall not be violated.

Therefore, in addressing the issue of warrantless surveillances of foreigners, one must resolve who "the people" are.

The concept of "the people" is used several times in the Constitution. It is used in the Preamble—"We, the people of the United States"—and in several parts of the Bill of Rights.

Long ago, the Supreme Court declared in the Civil Rights Cases that "The words 'people of the United States' and 'citizens' meant the same thing, both describing the political body who, according to our republican institutions, form the sovereign people and a constituent member of this sovereignty."

First, since the rights afforded by the Bill of Rights do not protect the States as States, as held in South Carolina against Katzenbach, such are surely not available to foreign nations as foreign nations.

This view is shared by the Department of Justice. While some of the lower courts appear to feel that the amendment applies to aliens as individuals, the Supreme Court has not only not repudiated its earlier statements, but it seems to have gone out of its way to avoid declaring the amendment applicable to aliens. Note that in United States against United States District Court, the Keith case, the terminal case in this area, the Supreme Court stated:

> Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of government for intelligence information and the protected rights of our citizens. For the warrant application may vary according to the government interest to be enforced and the nature of citizen rights deserving protection.

In those cases where the fourth amendment applies, its single consistent demand is that Government searches and seizures be reasonable. In some cases it will demand compliance with the warrant clause. However, in other cases the legality of a particular search or seizure can be established without reference to the warrant clause—the true test is reasonableness.

As Mr. Justice Black noted in Collidge against New Hampshire:

> The fourth amendment does not require that every search be made pursuant to a warrant. It prohibits only "unreasonable search and seizures." The relevant test is not the reasonableness of the opportunity to procure a warrant, but the reasonableness of the seizure under all the circumstances. The test of reasonableness cannot be fixed by per se rules; each case must be decided on its own facts.

We know of many instances of border crossings, and even in some investigative cases, of concerns where we have administrative bodies handling them that there is no requirement to secure a warrant in order to search or seize. So it seems to me that with regard to collecting electronic surveillance, whether it is by radio or television or whatever other means, there should be no requirement to go to a court and secure a warrant. So in effect all that this amendment does, is to exclude from the warrant requirement electronic surveillance authority with respect to foreign agents and foreign powers. If we wanted to authorize surveillance of a foreign embassy, a foreign trade mission, or a foreign agent, a foreign spy—whoever the foreign element happens to be in this country—it seems to me that for an intelligence agency to be required to go to a judicial body and to get a warrant before such an electronic surveillance could take place is so absurd as to not even require our serious consideration here today.

I am hopeful that we will have overwhelming and resounding support for this amendment.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendments.

Mr. Chairman, I strongly oppose the gentleman's amendments.

No administration or intelligence agency official has requested it, nor do any of them support it.

Its adoption would not only eliminate most of the protections afforded the privacy rights of our citizens, it would also deal a severe blow to one of the bill's primary purposes, which is to provide needed assurances to intelligence field agents. The Intelligence Committee has already cut back on the warrant requirement; to reduce it any further would be counterproductive.

The arguments raised against eliminating the warrant requirement altogether are equally compelling here. Neither myself, nor the Intelligence Committee, nor the Senate, nor the administration wishes to protect foreign spies, diplomats, governments, or what have you.

We all do wish to protect those whom are entitled to protection: Americans, permanent resident aliens, and intelligence agents trying to do their job.

The best way to insure their protection is with H.R. 7308's warrant process. They deserve the best protection.

Americans and permanent resident aliens are in constant contact with foreign businessmen, tourists, and athletes, and with foreign embassies, trade missions, corporations, and political organizations. The warrant requirement will insure that surveillance of the foreign person or entity is for the proper purpose of obtaining foreign intelligence information and not an attempt to acquire personal or political information about Americans.

The warrant requirement will also insure that information lawfully acquired about Americans will only be disseminated for foreign intelligence purposes. The warrant requirement will further insure that agents performing a surveillance will not be later held up to scorn and ridicule or worse and will be able to perform their duties effectively and aggressively. It should be noted that the plaintiffs in the current suit against the Attorney General and FBI personnel, arising out of the Truong/Humphrey case, are not those who were the targets of the surveillance; rather, they are American citizens whose communications were incidentally overheard pursuant to the targeting of Truong and Humphrey.

According to the intelligence agencies officials, all of these things can be done, all the protections and assurances provided, without endangering our security or impeding intelligence collection activity.

I, for one, agree with these officials. There is no reason whatsoever to doubt their judgment—or their word. They are concerned about today's intelligence collection, not last year's or that of 5 years ago.

They are concerned about the problems facing today's field agents, not with how easy things were 5 years ago.

They must also look to the future, and prepare for it with the insights today's vision provides, not with yesterday's slogans.

These officials, unlike some of those whose letters we have recently read, bear the present responsibility for protecting our security. Retirement does afford the opportunity to spout slogans and holler half-truths. But that opportunity has not come yet for those with today's responsibilities.

In short, those intelligence officials presently running our intelligence agencies support the warrant requirement of H.R. 7308.

They and I oppose the gentleman's amendment.

[Mr. STRATTON addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the McClory amendment.

It is my privilege to serve on the Committee on the Judiciary and also my further privilege to serve on the Select Committee on Intelligence and on the subcommittee headed by the gentleman from Illinois (Mr. MURPHY), the chairman of the subcommittee which produced this piece of legislation. During its very laborious and, indeed, painstaking proceedings, our committee went over this bill with a fine-tooth comb. We discussed a number of amendments proposed in good faith by the gentleman from Illinois (Mr. MCCLORY), including this particular amendment.

I would ask my chairman, the gentleman from Illinois (Mr. MURPHY), to respond to this question:

Mr. Chairman, is it not the case that the Senate bill, which, if my memory is correct, was passed 95 to 1 by the Senate, contains a warrant procedure, a warrant requirement, covering the very kinds of cases that the gentleman from Illinois (Mr. MCCLORY) would seek to exempt?

Mr. MURPHY of Illinois. That is correct.

Mr. MAZZOLI. And is my statement correct, Mr. Chairman, that that bill passed the Senate 95 to 1?

Mr. MURPHY of Illinois. The gentleman is correct.

Mr. MAZZOLI. Would that vote indicate that the Senate, which is a very important deliberative body, was satisfied that the warrant requirement which the gentleman from Illinois (Mr. MCCLORY) seeks to exempt would not cause any danger to national security?

Mr. MURPHY of Illinois. That is cor-

rect. It covers every political philosophy in the Congress.

Mr. MAZZOLI. Let me ask the chairman this further question: Is it not true that if this exemption were to be ordered by the committee that this would mean that there would be situations where American citizens would be surveilled without protection of the warrant which currently is afforded American citizens under the present bill, H.R. 7308?

Mr. MURPHY of Illinois. That is right. Not only that, but the Pike and Church committees uncovered abuses which could still occur under the very exception Mr. McCLORY is trying to make in this amendment. For instance, an American citizen talking to an embassy; a permanent resident alien talking to a foreigner within the domestic borders of this country could be surveilled without the protection of a warrant. That is why Mr. STRATTON's reference to those two books, "Ultrasecret" and "A Man Called Intrepid" has no application to this amendment whatsoever.

This bill is confined directly to U.S. borders. What happens overseas, NSA counterintelligence or the CIA, as Mr. ROSE aptly pointed out earlier, it is open season and anything can be done.

Mr. MAZZOLI. So we are dealing only with electronic surveillance.

Mr. MURPHY of Illinois. Foreign intelligence electronic surveillance within the borders of the United States.

Mr. MAZZOLI. I thank the gentleman. I think that is an important point to make.

Let me make this further point: If we go along with the McClory proposed exemption, this does in a sense remove the protection which we seek to afford to American citizens. The protection is the existence of a warrant before that person's conversations or activities can be surveilled. That would be removed if the gentleman's amendment prevails.

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, I was curious about the gentleman's comments that this passed the Senate by a vote of 95 to 1, and by the implementation that since the Senate passed it by 95 to 1, then obviously this House ought to follow the Senate's proposal.

Mr. MAZZOLI. I think the gentleman misunderstands me.

Mr. ERTEL. What did the Gulf of Tonkin resolution pass the Congress by?

Mr. MAZZOLI. My point in asking that question of the chairman of our committee was that when the Senate passed its wiretap bill by 95 to 1, and the Senate bill has across-the-board warrants for foreign intelligence surveillance the Senate must have felt that warrants pose no potential harm to the national security. The House is supposed to pass our own bill, but I am just saying that the other body clearly indicated that they had no qualms with warrants.

Mr. ERTEL. I suggest that the Senate has been wrong before, and by how many votes did the Gulf of Tonkin resolution pass? I would suggest that was wrong also.

Mr. MAZZOLI. I think the Gulf of Tonkin resolution is not apposite to what we are doing today.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I would like to point out that the 95-to-1 vote in the Senate included the material we have already excluded from this bill.

The CHAIRMAN pro tempore (Mr. EVANS of Colorado). The time of the gentleman from Kentucky has expired.

(At the request of Mr. McCLORY and by unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. McCLORY. If the gentleman will yield further, as the gentleman from North Carolina (Mr. ROSE) pointed out, we have excluded a substantial part of the intelligence-gathering activities under the amendment which both sides have agreed upon, but which was contained in the bill which the Senate passed by a 95-to-1 vote. In other words, we are rejecting what the Senate has done because we find it inconsistent with our best national security interests. Let me also point out that this amendment we are now discussing was before our subcommittee, and it lost on a 6-to-6 tie vote—the precise amendment I am offering now.

Mr. MAZZOLI. If I could reclaim my time momentarily, I think the gentleman is also aware that after the amendment was more fully explained—there was some early lack of complete appreciation of the significance of the gentleman's amendment—I think the vote was different.

Mr. McCLORY. I think there may have been some other pressures applied, but I know that in the course of our hearings we had Mr. Morton Halperin in the room, and I said, "This amendment would only apply if we were targeting in on, for instance, the Soviet Embassy."

But then he said, "Yes, but what if I am telephoning the Soviet Embassy?"

I said, "I am very sorry about that, Mr. Halperin, but I would like to point out that we still, in this amendment, minimize prosecution so that if somebody makes an unrelated call to the Soviet Embassy, that is minimized even if we adopt the amendment."

Mr. MAZZOLI. I am not so sure as the gentleman, because how would it be minimized? There is no minimization procedure.

Mr. McCLORY. Oh, yes. I would just say there are minimization procedures and they would be required and they would be imposed. As far as the "Man Called Intrepid" is concerned, the headquarters was right in the RCA Building in New York City, N.Y.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I would like to know how under the bill the warrant process works.

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

(On request of Mr. VOLKMER, and by unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Mr. Chairman, if the gentleman will yield further, how, under the warrant process, will my telephone call be protected to a foreign embassy that is being electronically surveiled?

Mr. MAZZOLI. That will be protected ab initio, because when the Chief Executive or the delegate of the Chief Executive, the Attorney General, goes to court to seek the warrant, in the first place he or she has to make a listing of exactly what information is to be gathered and what minimization procedure will be followed. This is all done before the tap is ever installed, before the warrant is ever issued.

Mr. VOLKMER. But wait a minute. My telephone call is going to be picked up. They will not shut it off as soon as I call. So how will it be protected?

Mr. MAZZOLI. If the court is satisfied that the kind of tap which is asked for would routinely pick up American citizen calls those conversations could be minimized away sufficiently.

Mr. VOLKMER. The gentleman is saying the court probably would not permit a wiretap by telephone on a foreign embassy? Is that what the gentleman is saying?

Mr. MAZZOLI. No.

Mr. VOLKMER. That is the case with any embassy.

Mr. MAZZOLI. I am not so sure, because when we have such an embassy as the Soviet embassy which has trade missions and economic missions and education missions they would have all kinds of calls.

Mr. VOLKMER. Take South Yemen, for instance.

Mr. MAZZOLI. But it would all come to the judges ahead of time for their determination.

Mr. VOLKMER. Does it say the judges will take that into consideration? In what section?

Mr. MAZZOLI. I am not sure what section, but it has a full series.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has again expired.

(By unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. I will yield to the gentleman from Arizona in a moment if I may finish my point to the gentleman from Missouri.

There is a whole series of material and data which have to be submitted on the application for the warrant.

Mr. VOLKMER. But I do not find anything in there which would say if the electronic surveillance would pick up any number or amount or percentage of U.S. persons' conversations, that it should be denied. I do not find that in there.

Mr. MAZZOLI. No.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, the situation the gentleman refers

to, if he calls an embassy and he asks when is their ballet or circus coming to town, and it has nothing to do with foreign intelligence, there are provisions in this bill that provide that telephone call, that this conversation will be struck.

Mr. VOLKMER. That is not in the gentleman's amendment, I believe. I believe the gentleman has the same minimization procedure.

Mr. MAZZOLI. Mr. Chairman, let me reclaim my time and I yield to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Chairman, I thank the gentleman for yielding, but I think the point we are trying to make is whether or not a U.S. citizen's rights would be infringed on, and I would like to put an example. Supposing a U.S. citizen does call the Soviet Embassy, or whatever embassy, and he has a legitimate request. No one wants to infringe on his rights and obviously this would be taken care of because the person would be identified and interviewed and if he said he wanted a visa, it would be dropped. But on the other hand, let us take a person who has been in deep cover for 15 years and he has not been activated and he has been wondering why he has not been contacted by the embassy espionage network, then the only way for him to go is to the principal, the Soviet Embassy to be activated.

The CHAIRMAN. The time of the gentleman has again expired.

(By unanimous consent, Mr. MAZZOLI was allowed to proceed for 1 additional minute.)

Mr. RUDD. Mr. Chairman, if the gentleman will continue to yield, let me say that in that way there would be identification of a network of Soviet spying activities.

Mr. MAZZOLI. Let me try to answer the gentleman's question.

Mr. RUDD. This does not infringe on the rights of citizens, all it does is secure the Nation in a time of grave circumstances.

Mr. MAZZOLI. I would like to answer the gentleman in two ways. One is that I do not think that people who call up the Russian Embassy to ask about the Bolshoi ballet will be picked up for interviewing. Such a call would be routinely expunged from the record and would never be brought to anyone's attention.

Second, any bill Congress would pass is going to be imperfect. You cannot cover every hypothetical concern. Although I did not support the gentleman from Illinois' amendment, the committee accepted it in order to craft the best possible bill and the most passable bill. Anything like this is imperfect. But I do think, all things considered, we have written a very good bill which deserves the support of the committee.

Mr. ASHBROOK. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

(Mr. ASHBROOK asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Chairman, I want to quote from a very knowledgable expert in this field.

Admiral Murphy spoke very directly to this bill, and I will read specifically from his testimony. Like Admiral Turner, he said, "I am in favor of H.R. 7308," and then you start getting the "buts" and the "ifs." Here is the statement, which I am going to read:

> In the comments set out below, the department outlines a number of significant problems . . .

And I am going to read it:

> . . . with the bill not to indicate a lack of support, but to demonstrate to the committee that the compromise represented by H.R. 7308 has been reached at substantial risk to the department's intelligence operations.

I spoke a little bit earlier in the debate about witnesses sending me a telegram. That is about as great a telegram as you can get. He said in effect that there was a compromise reached by people outside of the Defense Department. He said in effect that the Defense Department is constrained to support H.R. 7308, but we think you ought to know that it has been reached at substantial risk to the Department's intelligence operations. That is what he is clearly saying.

Let me go on and quote his testimony to you:

> This overall approach has two distinct weaknesses. First, the extension of coverage beyond American citizens, corporations and associations adds substantially to the risks of compromise of important intelligence sources and methods without any concomitant benefit for Americans. It is important that Americans have the assurance that when intelligence agencies seek information through electronic surveillance of Americans, there will be a judgment made by someone outside the Intelligence Community as to the importance, relevance and necessity of that surveillance to foreign intelligence purposes. However, when the intellignece agencies seek information through electronic surveillance of foreigners who are agents of foreign intelligence services or foreign entities that are directed and controlled by foreign intelligence services, there is no benefit to Americans from requiring such a judgment from someone outside the Intelligence Community.

That is the key. He is distinguishing between Americans and foreign entities, foreign sources, something which the gentleman from Illinois (Mr. MCCLORY) is trying to do in his amendment.

He went on to say this, and this is all one quote:

> In many cases, the means of communication used by these foreigners and foreign entities are totally devoted to their intelligence work against the United States and Americans would have no access to them in any case.
>
> The primary reason for extending coverage beyond American citizens and corporations to reach these foreign intelligence agents and the totally foreign organizations to which they belong or which they use is an attempt to provide an alternative to the use of the President's inherent power under the Constitution to conduct electronic surveillance without a warrant. If the bill covered only Americans, the President could exercise his inherent power, as consistent with the bill, with respect to foreigners. But by covering foreigners as well, the bill creates an alternative with a high risk and a very limited benefit for the rights of Americans.
>
> Extension of the bill to cover foreigners carries with it very substantial risks of compromise of important and highly productive intelligence sources and methods.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. ASHBROOK) has expired.

(By unanimous consent, Mr. ASHBROOK was allowed to proceed for 1 additional minute.)

Mr. ASHBROOK. Mr. Chairman, that is probably a statement from the most knowledgeable official working in the field, Adm. Daniel J. Murphy.

Mr. MURPHY of Illinois. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. MURPHY of Illinois. Mr. Chairman, I would like to read to the gentleman an additional statement from the most knowledgeable admiral in the field. The statement to which the gentleman referred was given when the subcommittee was considering the bill. Since then, we amended it; we adopted the McClory amendment.

Here is the admiral's language after the adoption of the McClory amendment, from the "Most Knowledgeable Man in the Field," to use the gentleman's own words:

> When I appeared before the Legislation Subcommittee of your Committee, I testified that the Department of Defense supported H.R. 7308, as introduced. I also expressed our reservations about particular provisions which, in my view, posed risks to security which were not outweighed by the potential benefits to civil liberties that might be provided by those provisions.
>
> In the course of your Committee's consideration of H.R. 7308 changes were made not only to the provisions I mentioned in my testimony but also to others. These changes minimize risks to security and effect important improvements in the system under which the Department of Defense would be required to operate. I have reviewed the bill reported by your Committee and wholeheartedly support its passage. The bill would directly facilitate certain intelligence activities of the Department of Defense while at the same time protecting the privacy rights of United States citizens.
>
> Sincerely,
>
> DANIEL J. MURPHY,
> *Admiral, USN (Ret.)*

Mr. ASHBROOK. Admiral Murphy, I would say to my colleague from Illinois, was opposing it on January 10.

Mr. MURPHY of Illinois. He was speaking, in the instance cited by the gentleman from Ohio, before we adopted the McClory amendment.

Mr. ASHBROOK. Before the wagon circled.

Mr. MURPHY of Illinois. Now it is before the wagons circled. However, before the gentleman said that the admiral was the most knowledgeable man in the field.

Mr. ASHBROOK. He is still the most knowledgeable, but the most knowledgeable man in the field is constrained by policy, and administration policy very clearly is involved in this bill. His original statement is very clearly in favor of the McClory amendment. The gentleman is right. Once the wagons circled, he took that stand. In his letter, he retracted nothing, of his January 10 statement. It

still stands. The amendment we adopted in committee only went part way.

Mr. MURPHY of Illinois. We adopted the McClory amendment in committee, and this is Admiral Murphy's subsequent statement. In the gentleman's own words, he is the last word on this subject.

Mr. ASHBROOK. I still think he is the most knowledgeable man in the field.

Mr. MURPHY of Illinois. If the gentleman is going to talk about the full circle, include his final letter on it.

Mr. ASHBROOK. I think that is only fair. That is right. What the admiral is saying, however, is that only a part of that gap was closed. If he had his way, he would not have warrants for surveillance of foreigners in this country. He was not satisfied before, and I think his statement stands. This is what the admiral says, as I say, before the circle was formed on the wagons.

Mr. FISH. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Mr. Chairman, I rise in support of the amendment, offered by the gentleman from Illinois (Mr. McCLORY), to limit court issued warrants to U.S. persons.

I share the reservations expressed by my colleagues today with regard to H.R. 7308 and disagree with the administration's belief, in the words of the Attorney General, that H.R. 7308:

> Will strengthen the capability of our intelligence agencies dealing with foreign espionage.

On the contrary, Mr. Chairman, I believe that this measure as written will dangerously impede the progress of our foreign intelligence activities.

In the deliberations of the Republican Policy Committee, it was determined that the intrusion of the judicial system in the intelligence community is totally inappropriate. This is particularly true with respect to foreign spies. The provision in H.R. 7308, calling for a special Federal court to exercise primary oversight of the use of electronic surveillance, is a radical departure from the constitutional and legal precedents which have governed our intelligence activities up to now. There is no evidence of case law empowering the Federal courts to authorize or reject foreign intelligence gathering activities as proposed by the committee bill. The security of sensitive material would be seriously threatened by this unprecedented move and the resultant unnecessary delay and, more importantly, the unnecessary disclosure of sensitive information are problems which need not plague our intelligence activities.

In my judgment, the President is mistaken when he states that H.R. 7308 will establish the Nation's first legislative controls over foreign intelligence surveillance. It will establish artificial and unprecedented judicial controls over politically sensitive decisions related to intelligence gathering.

The totality of this amendment which will be offered by the gentleman from Illinois is a responsible and effective approach to foreign surveillance reform. The amendments recognize and respect the constitutional authority of the executive branch in its responsibility to protect our nation from foreign aggression. It also recognizes the appropriate congressional role in oversight by providing for the inspection of records by the House and Senate Intelligence Committees.

Deterrents to abuse are an integral part of this amendment which calls for surveillance approval in writing from the Attorney General and executive branch officials where a non-U.S. person is the target of an investigation. The McClory amendments assure responsible action on the part of those empowered to authorize foreign intelligence electronic surveillance.

Mr. RUDD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support this important amendment.

I agree with our colleague from Illinois (Mr. McCLORY) that intelligence-gathering involving only foreign citizens associated with a foreign government should not be tied to a judicial warrant requirement.

The minimization procedures involving U.S. persons are more than adequate to protect the privacy and the rights of our own people.

It makes absolutely no sense whatsoever for our intelligence personnel to be required to obtain judicial warrants to conduct electronic surveillance against foreigners visiting our country—when those persons might have known or suspected ties to Communist governments or terrorist organizations, and are possibly involved in clandestine activities about which the President must be fully informed on a highly classified basis.

I am sure that most Americans would consider it "unreasonable" to involve the courts in such a sensitive intelligence function with solely foreign policy importance to the President and the executive branch of Government.

I urge adoption of the amendment.

Mr. BOB WILSON. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, let's face it, from its very inception H.R. 7308 was never intended to facilitate the legitimate activities of the intelligence community. In the words of one witness who testified in favor of the bill he summarized its purpose by saying,

> The basic intention underlying H.R. 7308 is to minimize, not encourage electronic surveillance.

The purpose for this Foreign Intelligence Surveillance Act was and is to protect the rights of U.S. persons against future abuses. It is only recently that the advocates have realined their priorities to now argue that the underlying purpose is to help the intelligence agencies by eliminating doubts about legality.

Mr. Chairman, the truth is we could all support H.R. 7308 if it had limited itself to providing protection for U.S. persons, those who had allegedly been abused by illegal wiretaps. But no—the bill has been broadened with onerous judicial procedures to provide extraordinary protection for foreigners, spies, embassies, trade missions, travelers, et cetera. Incidentally the kind of protection that our Government agencies and citizens do not enjoy when in foreign countries.

Mr. Chairman, there is absolutely no justifiable reason to extend the judicial warrant requirement beyond situations where U.S. persons are targeted. To quote from the official position of the Department of Defense submitted to the Committee on this matter:

> The extension of coverage beyond American citizens, corporations and associations adds substantially to the risks of compromise of important intelligence sources and methods without any concomitant benefit for Americans.
>
> If the bill covered only Americans, the President could exercise his inherent power with respect to foreigners.

Accordingly, I ask your support of the gentleman's amendment.

Mr. BOLAND. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, the administration opposes this amendment. I know of no one in the intelligence-collecting agencies of the Government who favors the amendment. This amendment was considered in the committee, and it was defeated.

What this amendment would do would be to delete the warrant requirements for all targets except—except U.S. persons. It sounds great; does it not? Most of the abuses, or a great number of the abuses, which occurred some years ago—and there is no sense in rehashing those years and that period, as I am sure all of us are familiar with it—a number of those abuses occurred, because it was possible to survey embassies, foreign embassies without warrants, pick up the names of American citizens, pick up information on them when they were communicating with these foreign powers and foreign embassies.

History shows and the record proves that oftentimes the information which was collected under the guise of surveilling foreign powers, foreign embassies, and consulates was used against American citizens. That is the reason why we have an across-the-board warrant in this bill. That is one of the reasons why it has been asked for not alone by the Carter administration but by the Ford administration. That is the reason why it is contained in the Senate bill, and that is the reason why the distinguished chairman of the Committee on the Judiciary, the gentleman from New Jersey (Mr. RODINO) came in here under a lot of personal pressure to voice his opinion and his support of this bill.

That is the reason why they support this bill, to protect the constitutional rights of American citizens and so that the pretext of gathering information without warrants could not be used in the future.

I would think that those of us who recall history and who are familiar with what happened in the past ought to remember, and so, Mr. Chairman, on that basis I think this committee ought to reject the amendment offered by the gentleman from Illinois (Mr. McCLORY).

The amendment has been gone over thoroughly by this committee. It has been studied by the subcommittee chaired by the distinguished and able gentleman from Wisconsin (Mr. KASTENMEIER), and it has been gone over carefully by many others, including those who are in the intelligence-collection business of our Government itself and who are interested in gathering the best intelligence to protect our national security and who are concerned with our national interests. They do not favor this amendment. Does that not say something to us? It says something to me.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. Of course, I will yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding.

I do not know of any abuses that have occurred with respect to U.S. citizens in the last couple of years. I think the references the gentleman makes are to Joseph Kraft and Mortimer Halpern, and those were not cases in which we were eavesdropping on foreign powers or foreign agents. They were indeed violations of existing guidelines at that time; they were abuses.

But we always hark back to the wiretaps in the cases of Joseph Kraft and Mortimer Halpern and one or two others that occurred more than 2 or 3 years ago but which are wholly unrelated to the subject of my amendment at this time.

Mr. BOLAND. Mr. Chairman, in response to my friend, the gentleman from Illinois (Mr. McCLORY), let me say I am not aware of any abuses which occurres over the last couple of years. I think people have learned something from history.

But I am sure that gentleman is familiar with the abuses that have occurred, not over the last couple of years, but maybe over the last 10 or 12 years or so, all of which have been emphatically delineated by the Church committee and by the Pike committee, and all of those involved matters in this area. Certainly the gentleman is familiar with those abuses. A lot of those abuses came as a result of tapping or surveilling foreign embassies or consulates of foreign powers.

Mr. McCLORY. Mr. Chairman, if the gentleman will yield further, it is possible that information might come with respect to intercepting communications from foreign powers which are exempted here.

Mr. BOLAND. That is what we are trying to do, I will say to the gentleman from Illinois (Mr. McCLORY). The very fact is that when we are surveilling foreign powers or foreign embassies or foreign consulates or what-have-you, and some American citizens are involved and their names are brought out, they are caught in the trap, they are caught in the sweep of the surveillance, and they ought to be protected. This bill protects them.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. BOLAND) has expired.

(On request of Mr. STRATTON, and by unanimous consent, Mr. BOLAND was allowed to proceed for 3 additional minutes.)

Mr. STRATTON. Mr. Chairman, if the gentleman will yield, the gentleman's own committee is providing oversight, and I have no quarrel to make with the committee's performance in that connection.

But the gentleman said a moment ago that some of the active intelligence officers were in support of this bill. I recall having the opportunity at the gentleman's invitation to sit in on the meetings, and when we had the heads of these intelligence agencies up in the gentleman's secure quarters discussing this bill, frankly, the impression I got was not one of enthusiasm.

What they said, the situation we are in now is chaotic because anytime anybody goes out to try to nail some foreign agent he gets arrested and has to go to court for violating some law.

Mr. BOLAND. We do not need a better argument than you are making here for the warrant. The FBI wants this.

Mr. STRATTON. If the gentleman will yield further, certainly this situation is better than what they are faced with now. But I think we need the best possible intelligence, and I do not think we will get it under this kind of an arrangement.

Mr. BOLAND. What we are trying to do is correct the situation with which we are faced now. We are losing, I think, some important intelligence, because we do not have this kind of legislation. And all of the intelligence community leaders agree with that.

Mr. STRATTON. We are trying to prevent the evils of the past, but we are forgetting about the problems of the future.

Mr. BOLAND. Let us correct the evils of the past, because they might very well be the evils of the future.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I yield to the gentleman from Missouri.

Mr. VOLKMER. I thank the gentleman for yielding.

Mr. Chairman, is the gentleman saying that, under the provisions of the bill, the conversation that an American citizen may have with a foreign national, whether it be a consul, embassy, or wherever, will not be recorded by whatever type of electronic device is being used, because there is a warrant being used, they are not going to be recorded, is that what the gentleman is saying?

Mr. BOLAND. Oh, yes, they are picked up and they will be recorded.

Mr. VOLKMER. They will be recorded, wherever that occurs.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. BOLAND) has expired.

(On request of Mr. VOLKMER and by unanimous consent, Mr. BOLAND was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Then the protection that we are talking about is not preventing the recording of them?

Mr. BOLAND. That is right.

Mr. VOLKMER. Or the hearing of them by some agent at a later time. We are talking about the use of them, the dissemination and the destruction of them.

Mr. BOLAND. That is right.

Mr. VOLKMER. The difference between the two the gentleman really objects to is the fact that the McClory amendment does not provide for that destruction or the nonuse thereafter, not the actual recording?

Mr. BOLAND. The gentleman had discussions with the gentleman from Kentucky.

Mr. VOLKMER. Yes. I agree with that. The difference is that that is exactly the minimization by the court. There is a difference. And that is basically the problem the gentleman sees with the McClory amendment; is that right?

Mr. BOLAND. That is right.

Mr. VOLKMER. The question then is that if the McClory amendment provided for a certification like he has, but a minimization procedure like the gentleman has, then the gentleman would have no objection to it; is that correct?

Mr. BOLAND. Oh, no. I object to the McClory amendment because, as I have indicated, he would delete the warrant requirement for all targets except U.S. persons. He would require a warrant which would surveil U.S. persons. He would eliminate a warrant requirement for the surveillance of aliens, foreign powers, foreign embassies, consulates, or what have you. But the real problem occurs when information concerning U.S. persons is picked up. If it is a sweeping surveillance of foreign powers, foreign agencies, that is where the information with respect to U.S. persons is picked up, and that is where the damage is done.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. BOLAND) has again expired.

(On request of Mr. VOLKMER and by unanimous consent, Mr. BOLAND was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Is the gentleman saying, then, that warrants will not be permitted in areas where U.S. citizens' conversations are involved—because 50 percent of them will be by U.S. citizens or foreign national here as permanent resident aliens—is the gentleman now saying that those warrants will not be issued? That is what I got from the gentleman from Kentucky, if he were the judge. I am afraid a wiretap on the telephone where there are quite a few conversations, or, let us say, a bugging device, transmitting device, is put in the reception room in the embassy where they had a lot of traffic of U.S. citizens, if he were the judge the gentleman from Kentucky would say no warrant under this policy.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, what the gentleman from Kentucky was endeavoring to say,

perhaps lamely, from the floor a moment ago, was the fact that if the judge, having received the warrant application, finds there is going to be a succession of American citizens' calls or surveillances which occur, in a sense, incidental to the issuance of the main warrant, then I think the judge would have to sit down and say, "Well, you are really actually targeting American citizens under the guise of targeting a third party, so you better come back and tell me why you do not target American citizens directly and tell me how you intend to minimize these surveillances and what information you are looking for."

I think there is an essential difference here as to the gentleman from Illinois' amendment. There, I believe any minimization to be at the sufferance of the Attorney General. Here, we are talking about court approval for minimization, which means that if the court does sense that if there is a ruse being perpetrated it can expose that ruse.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I yield to the gentleman from Illinois.

Mr. McCLORY. I think it should be pointed out that the minimization applies whether the McClory amendment is adopted or not. The minimization is established and is put in place by the executive. It does, under the warrant requirement, require approval by the judge. In other words, a judge is going to decide whether or not minimization procedures are adequate. If he decides they are not adequate, they could go back and maybe reprogram the whole system with regard to minimization. This seems to be an absurd position.

Mr. ERTEL. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

I would like to make a couple of points for clarification, and perhaps Mr. McCLORY could clarify these for me.

As I understand the bill, if we are targeting foreign nationals such as a foreign embassy, a trade mission, or an agent of a foreign government, we must have a warrant which is not based on probable cause, but on some other slippery sort of concept where the court would authorize a wiretap or bug or electronic surveillance of that embassy or foreign mission. In that procedure we would have minimization so that if an American citizen were encountered as a participant in a phone conversation or in a room of a trade mission, it would be minimized as far as the extent of knowledge of his activities were concerned, and there would be a destruction order and it could not be used. Is that correct?

Mr. McCLORY. Exactly. If it is unrelated that would apply, whether they have a warrant or do not have a warrant.

Mr. ERTEL. Under the gentleman's amendment, as I understand it, his amendment says that instead of going to the court to get a warrant which is based on a concept we are not really sure of because the bill does not set it out, that the Attorney General will actually issue a surveillance certificate saying they can surveil that foreign trade mission or embassy, or a building a foreign government owns, and he will set out in that surveillance certificate minimization procedures. He will also destroy information from American citizens; is that correct?

Mr. McCLORY. Yes; the Attorney General is an executive officer who is required to be confirmed by the Senate.

Mr. ERTEL. The only question then is, practically everything is basically the same, except that you need a warrant when you are targeting foreign citizens under the committee bill?

Mr. McCLORY. Exactly.

Mr. ERTEL. What we are doing then is giving the foreign embassies, the foreign trade missions, the foreign citizens, rights under our Constitution which our citizens may not, and in fact in most countries in the world, do not enjoy in those countries.

Mr. McCLORY. The gentleman is precisely right. What we are doing under this legislation, unless my amendment is adopted, is requiring a judicial warrant to issue before we could engage in any kind of electronic surveillance. This could be by telephone, by radio, by microwave, or by telephone interception. We would require the executive department, specifically the Attorney General, to ask a judge to decide whether or not such electronic surveillance should take place.

Mr. ERTEL. Can the gentleman tell me anyplace in the world where there are American citizens receiving this kind of protection from the interception of their communications when they are in a foreign country?

Mr. McCLORY. There is no such comparable situation throughout the rest of the world. I might say that foreign powers in this country will not be subjected to this kind of restriction. We will have Americans subjected to surveillance by foreign agencies in this country, even though the Americans will not be enabled to engage in electronic surveillance of foreign agents of foreign powers without judicial approval.

We will be in a completely absurd situation unless we adopt the McClory amendment which would exclude foreign powers and foreign agents from this warrant requirement.

Mr. ERTEL. I ask one further question, if the gentleman will be good enough to respond. Under the procedure set out by the Executive order today, do we not have basically the same thing rights with respect to the American citizens? We have to as provided in your amendment for foreign citizens have certification of the Attorney General to surveil American citizens do we not?

Mr. McCLORY. Yes; we do have that.

Mr. ERTEL. So what we are doing by this legislation is giving foreign nationals, if we do not adopt this amendment, the rights American citizens have today. We are really protecting foreign nationals, foreign people in the United States, contrary to the exclusion of rights the American people have in foreign countries?

Mr. McCLORY. We are according by statutes to the foreign nationals rights which they constitutionally do not have, and we are giving rights to foreign agents and foreign powers which are superior to the rights of U.S. persons.

Mr. ERTEL. In other words, what we are doing today is expanding the fourth amendment type protection of the American Constitution, as interpreted by the circuit courts, and extending it to protect foreign nationals.

Mr. McCLORY. Exactly.

Mr. ERTEL. I support the gentleman's amendment. I think it makes sense not to extend those protections to foreign citizens which may work to the detriment of the American people.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment and I move to strike the last word.

The CHAIRMAN. Without objection the gentleman from Illinois is recognized for 5 minutes.

There was no objection.

Mr. MURPHY of Illinois. I cannot, Mr. Chairman, let that statement go by, that the fourth amendment only applies to American citizens. The Justice Department and the Attorney General in a number of instances have stated that the fourth amendment applies to everybody within the borders of the United States.

Mr. BOLAND. If the gentleman will yield, in fact the Supreme Court has said that very thing, that the fourth amendment does apply to people in the United States, to foreign visitors, teachers, athletes, and everybody else.

Mr. ERTEL. Does it apply to foreign embassies in the United States?

Mr. MURPHY of Illinois. To every person within the borders of the United States.

Mr. ERTEL. The foreign embassies I do not believe are considered to be American property.

Mr. LIVINGSTON. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

(Mr. LIVINGSTON asked and was given permission to revise and extend his remarks.)

Mr. LIVINGSTON. Mr. Chairman, I only want to point out at this time that I am just appalled by this discussion and amazed that this matter is before the floor, such as it is.

I sincerely support the amendment offered by the gentleman from Illinois.

Being a lawyer, and a former prosecutor with about 6 years experience and having also worked as a defense attorney in several cases, I think one of the most important things that faces the future of this country is certainly our national security. What we have before us right now is a bill that would threaten that security.

We can talk about it all we want, but essentially we are saying the United States will play by the Queensberry rules when our opponents will have all the weapons available to them that they might want to throw at us. I think that flies in the face of all reason and commonsense, and I think this amendment would rectify that problem.

Mr. RHODES. Mr. Chairman, will the gentleman yield?

Mr. LIVINGSTON. I yield to the gentleman from Arizona.

Mr. RHODES. Mr. Chairman, I share the gentleman's amazement that this bill was even brought to the floor. I do not know any other nation in the world that has legislation like this to protect foreign nationals.

I might ask the gentleman from Illinois, if he will respond to the question: Is there any other nation in the world that has legislation whereby the foreign agents in that nation are protected by the laws of that nation?

Mr. McCLORY. Mr. Chairman, if the gentleman will yield, let me say there is a great deal of concern about the privacy and the protection of individuals. This is also a concern of a number of other nations, especially in Western Europe. Through our laws at the present time we have provided for the protection of the interests of privacy and provided for minimization of any incidental interception which applies with respect to U.S. persons. But there is no nation in the world which requires the Executive to go to a special court or anything resembling that in order to exercise what is an executive function. The gentleman is exactly right.

Mr. LIVINGSTON. Mr. Chairman, if I might recapture my time, might I ask the gentleman from Illinois: Is there anything in this amendment which would detract from the rights of a person under the Constitution of the United States, the fourth amendment, or any other amendment of the Constitution of the United States?

Mr. McCLORY. No. My amendment only applies to foreign agents or foreign powers. Even if that provision is retained in the bill, a warrant will be required when there is a desire to engage in electronic surveillance of a U.S. person.

Mr. LIVINGSTON. And certainly the exclusionary rule of evidence would apply to a U.S. citizen, would it not?

Mr. McCLORY. It would, yes.

Mr. ZABLOCKI. Mr. Chairman, I move to strike the requisite number of words.

(Mr. ZABLOCKI asked and was given permission to revise and extend his remarks.)

Mr. ZABLOCKI. Mr. Chairman, I rise in support of H.R. 7308, as reported by the Intelligence Committee.

H.R. 7308 as pointed out by the chairman is a complex piece of legislation carefully designed to deal with an ever more complex problem. The members of the Intelligence Committee and the Judiciary Committee and all those who had a hand in its drafting deserve our commendation and thanks. The bill as reported deals with perhaps the most important task facing this Congress—how to reconcile the often competing interests of civil liberties and national security.

Mr. Chairman, H.R. 7308 is a bill that accomplishes both objectives. Furthermore it is a bill that legitimizes much needed but often maligned intelligence collection activities while being responsive to the privacy interests of the American people. I have come to this conclusion, although at one time, as our colleague, the gentleman from Illinois (Mr. McCLORY), I had some reservations about the legislation.

Mr. Chairman, H.R. 7308 is also a bill that has drawn the support of the White House, the Justice Department, and the U.S. intelligence agencies, the American Bar Association, Common Cause, the American Civil Liberties Union, the New York Times, the Washington Post, and the Chicago Tribune.

If nothing else, this broadbased support from such divergent groups demonstrates the deliberate care taken in drafting this legislation.

Because such care was taken, we now have before us a bill that in my opinion strikes precisely the right balance in furthering both privacy interests and security interests.

Though it is the proper balance, it is a delicate balance, and any tampering with it could result in the collapse of the whole structure. The bill's opponents should know this. They also know that as we rush toward adjournment, the time of the House is precious. We are thus faced with approximately 50 proposed amendments to a bill that has already been subjected to several years of detailed study by the Congress.

No more than a handful of these amendments contain any substance, and even these few, if passed, would impair the balance—without contributing to the national security.

I would implore the committee to keep this fact in mind when debating and amending this bill. Let us not throw away this chance to pass good legislation. Let us not tell American people that this House cannot resolve the crucial issues facing it.

This is not a partisan bill. It is a good bill that will strengthen our intelligence collection capabilities. It is worthy of our support and I urge my colleagues to reject crippling amendments and vote aye on H.R. 7308.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I thank the gentleman from Wisconsin (Mr. ZABLOCKI) for yielding to me. I appreciate the statement the gentleman has made. I might say that the precise amendment that I am offering now is an amendment for which the gentleman voted favorably in the committee. I just wondered what has transpired to change the gentleman's mind so that he now finds himself in opposition to the amendment?

Mr. ZABLOCKI. Yes, I voted for the gentleman's amendment. I am sure the gentleman will agree with me that consistency is the hobgoblin of little minds. It is not necessarily a virtue to stand fast and hold to a position and not to be pliant and change one's views or one's mind. After further study and consideration of the effect of the gentleman's amendment I changed my mind.

Mr. BOLAND. Mr. Chairman, if the gentleman will yield, before we put this particular amendment to bed I would just like to remind the members of the committee who are here that the warrant requirement for foreign embassies, or for trade missions, consulates or for whatever, that requirement which is in this bill—and I hope the members of the committee do not lose sight of this fact—is for the protection of American citizens too. I repeat, it is for the protection of American citizens.

Someone here asked whether there is any other country on the face of the globe that makes this sort of requirement? Probably not. Is there any other country on the face of the globe that has a Bill of Rights? England does not have one. They do not even have a Constitution, and a lot of the other countries do not.

I think we ought to keep our minds on the fact that the legislation requires a warrant for embassies and foreign powers where there is a likelihood that Americans will be involved, because they ought to have the protection that a warrant offers. So I hope we keep our eye on the ball.

That is precisely the reason that this bill requires a warrant for foreign embassies or trade missions or foreign powers where the likelihood of an American citizen's interests being involved is not present.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Illinois (Mr. McCLORY).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ASHBROOK. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 178, noes 176, not voting 78, as follows:

[Roll No. 727]

AYES—178

Alexander	de la Garza	Kemp
Ambro	Derwinski	Kindness
Anderson, Ill.	Devine	Lagomarsino
Andrews, N.C.	Dingell	Latta
Andrews, N. Dak.	Duncan, Tenn.	Leach
Applegate	Edwards, Ala.	Lent
Archer	Edwards, Okla.	Livingston
Ashbrook	Emery	Lloyd, Calif.
Badham	English	Lloyd, Tenn.
Bafalis	Ertel	Lott
Bauman	Evans, Del.	Lujan
Beard, Tenn.	Evans, Ga.	Luken
Bennett	Evans, Ind.	McClory
Blanchard	Fish	McCormack
Bowen	Flynt	McDade
Breaux	Fountain	McDonald
Brinkley	Frenzel	McEwen
Broomfield	Fuqua	McKay
Brown, Mich.	Gephardt	McKinney
Brown, Ohio	Gilman	Madigan
Broyhill	Glickman	Mann
Buchanan	Goldwater	Marlenee
Burgener	Goodling	Marriott
Burleson, Tex.	Gradison	Martin
Butler	Grassley	Mathis
Carter	Gudger	Michel
Cederberg	Guyer	Milford
Clausen, Don H.	Hagedorn	Miller, Ohio
Cleveland	Hammer-schmidt	Mitchell, N.Y.
Cohen	Heckler	Mollohan
Coleman	Heftel	Montgomery
Collins, Tex.	Hightower	Moore
Conable	Hillis	Moorhead, Calif.
Conte	Holt	Mottl
Corcoran	Horton	Murphy, Pa.
Coughlin	Hubbard	Myers, Gary
Crane	Ichord	Myers, John
Cunningham	Jenkins	Nedzi
D'Amours	Jenrette	O'Brien
Daniel, Dan	Jones, N.C.	Poage
Daniel, R. W.	Jones, Tenn.	Pritchard
Davis	Kazen	Quayle
	Kelly	Rahall

Regula	Smith, Nebr.	Walker
Rhodes	Snyder	Walsh
Risenhoover	Spence	Wampler
Robinson	Staggers	Watkins
Rousselot	Stangeland	White
Rudd	Stanton	Whitehurst
Runnels	Steed	Whitley
Ruppe	Stockman	Whitten
Sarasin	Stratton	Wilson, Bob
Satterfield	Taylor	Wilson, Tex.
Sawyer	Thornton	Winn
Schulze	Treen	Wolff
Sebelius	Trible	Wylie
Shuster	Vander Jagt	Yatron
Sikes	Volkmer	Young, Fla.
Skelton	Waggonner	Young, Mo.
Slack	Walgren	

NOES—176

Addabbo	Fowler	Neal
Akaka	Gammage	Nix
Anderson, Calif.	Gaydos	Nolan
	Giaimo	Nowak
Annunzio	Ginn	Oakar
Aspin	Gonzalez	Oberstar
AuCoin	Gore	Obey
Baldus	Green	Ottinger
Barnard	Hall	Panetta
Baucus	Hamilton	Patten
Beard, R.I.	Hanley	Patterson
Bedell	Hannaford	Pease
Benjamin	Harkin	Perkins
Blaggi	Harris	Pickle
Bingham	Hefner	Pike
Blouin	Holland	Preyer
Boggs	Hollenbeck	Price
Boland	Holtzman	Pursell
Bolling	Howard	Railsback
Bonior	Hughes	Rangel
Bonker	Jacobs	Reuss
Brademas	Johnson, Calif.	Rinaldo
Breckinridge	Jones, Okla.	Rodino
Brodhead	Jordan	Roe
Brooks	Kastenmeier	Rogers
Brown, Calif.	Keys	Roncalio
Burlison, Mo.	Kildee	Rose
Burton, John	Kostmayer	Rosenthal
Burton, Phillip	Krebs	Roybal
Carney	LaFalce	Russo
Carr	Le Fante	Ryan
Cavanaugh	Lederer	Santini
Collins, Ill.	Levitas	Scheuer
Conyers	Long, La.	Schroeder
Corman	Long, Md.	Seiberling
Cornell	Lundine	Sharp
Cotter	McCloskey	Simon
Danielson	McFall	Solarz
Delaney	McHugh	Spellman
Dellums	Maguire	St Germain
Dent	Mahon	Stark
Derrick	Markey	Steers
Dicks	Marks	Stokes
Dodd	Mattox	Studds
Downey	Mazzoli	Thompson
Drinan	Meeds	Traxler
Early	Metcalfe	Tucker
Eckhardt	Meyner	Udall
Edgar	Mikulski	Van Deerlin
Edwards, Calif.	Mineta	Vanik
Eilberg	Minish	Vento
Fary	Mitchell, Md.	Waxman
Fenwick	Moakley	Weaver
Findley	Moffett	Weiss
Fisher	Moorhead, Pa.	Whalen
Fithian	Murphy, Ill.	Wright
Florio	Murtha	Yates
Foley	Myers, Michael	Zablocki
Ford, Tenn.	Natcher	Zeferetti

NOT VOTING—78

Abdnor	Flowers	Pepper
Ammerman	Ford, Mich.	Pettis
Armstrong	Forsythe	Pressler
Ashley	Fraser	Quie
Beilenson	Frey	Quillen
Bevill	Garcia	Richmond
Burke, Calif.	Gibbons	Roberts
Burke, Fla.	Hansen	Rooney
Burke, Mass.	Harrington	Rostenkowski
Byron	Harsha	Shipley
Caputo	Hawkins	Sisk
Chappell	Huckaby	Skubitz
Chisholm	Hyde	Smith, Iowa
Clawson, Del	Ireland	Steiger
Clay	Jeffords	Stump
Cochran	Johnson, Colo.	Symms
Cornwell	Kasten	Teague
Dickinson	Krueger	Thone
Diggs	Leggett	Tsongas
Dornan	Lehman	Ullman
Duncan, Oreg.	Mikva	Wiggins
Erlenborn	Miller, Calif.	Wilson, C. H.
Evans, Colo.	Moss	Wirth
Fascell	Murphy, N.Y.	Wydler
Flippo	Nichols	Young, Alaska
Flood	Pattison	Young, Tex.

Messrs. BREAUX, DINGELL, and BRINKLEY changed their vote from "no" to "aye."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MURPHY OF ILLINOIS

Mr. MURPHY of Illinois. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MURPHY of Illinois: On page 38, after line 24 add the following:

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

Mr. MURPHY of Illinois. Mr. Chairman, this is essentially a technical amendment intended to correct an omission in the language of the committee reported bill.

The bill contains several references to "state", but the term was nowhere defined therein. A definition is necessary since the District of Columbia, Puerto Rico, and territories and possessions are not usually encompassed by the word "State".

It is my understanding that the gentleman from Illinois (Mr. MCCLORY) does not oppose this amendment.

Mr. MCCLORY. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to my colleague from Illinois.

Mr. MCCLORY. Mr. Chairman, we have examined the amendment. It is a technical amendment, as the gentleman states, and there is no objection to the amendment.

Mr. MURPHY of Illinois. I appreciate the gentleman's remarks.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. MURPHY).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. M'CLORY

Mr. MCCLORY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MCCLORY: Page 32, strike out lines 4 through 25 and insert in lieu thereof the following:

(2) any person who—

(A) knowingly engages in clandestine intelligence activities for or on behalf of a foreign power under circumstances which indicate such activities are or may be contrary to the foreign policy or security interests of the United States;

(B) knowingly engages in sabotage or international terrorism, or activities in preparation therefor, for or on behalf of a foreign power; or

(C) conspires with or knowingly aids or abets any person to engage in any activity described in subparagraph (A) or (B).

Mr. MCCLORY. Mr. Chairman, what this amendment does is to eliminate the criminal standard with respect to intelligence-gathering activities, and to substitute language which provides that where a person is engaged in clandestine intelligence activities, whether he is a U.S. person or not, under circumstances which would indicate that his activities would be contrary to the foreign policy or security interests of the United States, that nevertheless he can be subjected to electronic surveillance.

This amendment, is important not only because it strikes from the bill wording which could negatively impact on our intelligence agencies' abilities to gather foreign intelligence information, but also because it would modify the tone of the bill so that it would be in keeping with its purpose—that is not to enforce Federal criminal statutes, but rather to regulate the use of electronic surveillance to gather foreign intelligence information.

Just as with the warrant procedure, the need for a criminal standard is nowhere to be found in the Constitution when the Government seeks to gather foreign intelligence information. The Supreme Court has recognized as recently as this past term in a case involving OSHA searches—Marshall against Barolws, Inc.—that the fourth amendment's probable cause provision does not require that all warrants be based on a finding of probable criminal activity.

Therefore, if a warrant is not required for this type of electronic surveillance—as the proponents of H.R. 7308 apparently admit—and if, as the Supreme Court has recognized—and as Attorney General Bell has testified—a warrant without a criminal standard can comport with the fourth amendment, then including in this bill a warrant requirement with a criminal standard is simply piling one overprotection and unnecessary requirement on top of another.

One very puzzling aspect of the genesis of the criminal standard in this bill is that when the other body was considering this bill's companion—S. 1566—in its Judiciary Committee Attorney General Bell testified that he opposed the criminal standard and posited six hypothetical situations in which it was the position of the Justice Department that a criminal standard would preclude the otherwise legitimate use of foreign intelligence electronic surveillance.

Judge Bell also testified against the criminal standard before the other body's intelligence Committee:

When a United States person furtively, clandestinely collects or transmits information or material to a foreign intelligence service pursuant to the direction of a foreign intelligence service and where the circumstances surrounding this activity indicate that the transmission of the material or information would be harmful to our security or that the failure of the government to be able to monitor such activity would be harmful to the security of the United States, then I believe that whether or not that activity is today a violation of our criminal statutes, the Government has a duty to monitor that activity to safeguard the security and welfare of the Nation. There is a certain danger in extending the criminal law, the purpose of which is to prosecute, convict and normally incarcerate the perpetrator, merely to satisfy the priniciple that electronic surveillance should not be undertaken absent a criminal violation.

Apparently the Justice Department now supports a criminal standard though I am unaware of any public statement made by the Department that its past statements were in error.

If a criminal standard was unwise then because it precluded under certain circumstances the legitimate use of foreign intelligence electronic surveillance, then it seems to me that it is still unwise.

Now, it is clear to those who understand intelligence activities and capabilities that most intelligence relates not to criminal activities, but solely to the subject of gathering information which may be useful to our Nation. This kind of information may relate to the condition of the crop year or the harvest in some foreign country. It may relate to the development of some kind of a foreign aircraft or a new type of arms.

It does not necessarily relate to any criminal activity. Consequently, all that this amendment does is to eliminate the criminal standard with respect to electronic surveillance. It seems to me this is essential for the conduct of our intelligence activities, and that this is an amendment that should be adopted by the committee.

I know that the subject of a criminal standard is one that is sought by some of the civil liberties groups. They feel that no intelligence activity should be carried on unless a crime has been committed or is about to be committed. If we defer all intelligence gathering until somebody is about ready to commit a crime, we are going to be left without information which we need for our own national protection. It seems to me this is a vital amendment, which will make this a much better bill.

I might say the amendment we have already adopted enables this legislation to coincide with the recommendations of the former Director of the CIA, Bill Colby, and many others who have given attention to this subject. The fact that we will not require a warrant with regard to the targeting of foreign embassies and foreign powers is an intelligent decision for this body to make, and it would likewise be intelligent for us to decide not to require a criminal standard in order to gather intelligence information which might be useful to our own protection.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. MANN. Mr. Chairman, I rise in opposition to the amendment.

(Mr. MANN asked and was given permission to revise and extend his remarks.)

Mr. MANN. Mr. Chairman, I rise in opposition to the gentleman's amendment. The so-called criminal standard contained in H.R. 7308 represents a reasonable and proper solution to a complex problem, a problem which at one time seemed insoluble.

As introduced both in the Senate and the House, this legislation would have authorized a judge to approve the wiretapping of American citizens and permanent resident aliens even thought no connection whatsoever with possible criminal activity had been demonstrated. This provision was adamantly opposed, and rightly so, by those who either felt that it was unconstitutional or felt as a matter of principle that there should be a higher standard for searching American citizens and permanent resident aliens.

On the other hand, both Attorney General Levi and Attorney General Bell, as well as many Members of Congress, were just as adamant, and again rightly so, in their belief that a rigid criminal standard would prevent the FBI from conducting much of the investigatory work which is so essential in counterintelligence activity.

This issue came to a head just as the House and Senate Intelligence Committees were preparing to begin markup on this legislation. After several weeks and many hours of discussion among the Attorney General, the FBI, the House and Senate Intelligence and Judiciary Committees, and civil liberties groups, consensus agreement was reached, one that in my judgment strikes that elusive and delicate balance between protecting individual liberties and giving our intelligence agencies the tools they need to protect our country. That agreement is reflected in the committee reported language. It is language which is acceptable to civil liberties groups and which is preferred by the FBI.

The provision contains two sections. The first section deals with U.S. persons who are engaged in "clandestine intelligence gathering activities," meaning espionage. As the Intelligence Committee report notes:

Probably the most critical term in this provision is "clandestine intelligence gathering activities." It is anticipated that most clandestine intelligence gathering activities will constitute a violation of the various Federal criminal laws aimed at espionage either directly or by failure to register. . . . The term "clandestine intelligence gathering activities" is intended to have the same meaning as the word espionage in normal parlance, rather than as a legal term denoting a particular criminal offense. The term also includes those activities directly supportive of espionage such as maintaining a "safehouse," servicing "letter drops," running an "accommodation address," laundering funds, recruiting new agents, infiltrating or exfiltrating agents under cover, creating false documents for an agent's "cover," or utilizing a radio to receive or transmit instructions or information by "burst transmission."

To authorize the wiretapping of U.S. persons suspected of engaging in such activity, the judge must find probable cause to believe that the activity "may involve" a criminal violation. This is a great deal less than the probable cause required to obtain a law enforcement search warrant. There is no requirement that the person be actively engaged in the commission of a crime, or even that he is about to be so engaged.

What type of criminal might be encompassed in this standard?

This is what led Senator GARN to note the following during Senate floor debate on S. 1566, and I quote:

Mr. President, many of us have been concerned that the adoption of a criminal standard would make it impossible for the FBI to get a court order for surveillance of people obviously engaged in traditional spying activity. For example the FBI might observe someone making "drops," and then known Soviet intelligence agents coming along and picking up what was dropped. This is traditional spying tradecraft, but the FBI cannot determine what information is being secretly transmitted to the intelligence agents. That is the kind of case where a judge might not find probable cause that a specific crime is about to be, or will be, committed. However, the standard requiring probable cause that the activity may involve a crime would allow surveillance in such cases. Therefore, I support the new standard because it provides enough flexibility to deal with the real problem faced in counterintelligence investigations. I agree with my colleagues that the standard is intended to deal with what we traditionally call spying activities.

This point is further elaborated in the language of the report of the House Intelligence Committee, and again, I quote:

This "may involve" standard replaces the previous noncriminal standard which appeared in H.R. 7308, as introduced. Both the former provision, and the "may involve" standard, address the same problem. The committee has concluded that it is necessary in order to permit the Government to investigate adequately in cases such as those where Federal agents have witnessed "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. Such a lack of knowledge would of course disable the Government from establishing that a crime was involved or what specific crime was being committed. Nevertheless, the Committee believes that the circumstances might be such as to indicate that the activity may involve a crime. The crime involved might be one of several violations depending, for example, upon the nature of the information being gathered.

In addition to the espionage and the foreign agent registration laws, other criminal laws whose possible connection to the U.S. person's activities would justify a wiretap under the "may" standard are the interstate transportation of stolen property statute and the Export Administration Act. Thus, those engaged in collecting industrial or technological information which, if disclosed to a foreign power, might present a threat to the national security, could be wiretapped.

The second section of the "criminal standard" deals with U.S. persons engaged in "other clandestine intelligence activities," that is, activity other than those connected with spying or espionage. As has been pointed out, these other activities are meant to include covert actions, propaganda, lobbying and other actions designed to influence events in this country. As was noted by former Director Colby in his testimony before the Judiciary Committee, this is a gray area where it is sometimes difficult to distingush between legitimate activity protected by the first amendment and unprotected intelligence operators. For this reason, the standard here is higher, and the judge must find probable cause that the actions of the U.S. person "involve or are about to involve" a criminal violation.

Obviously, this standard would be more difficult to meet. However, the FBI has repeatedly stated that it has no objection to this provision. The Bureau is almost totally concerned with intelligence gathering and the lower standard of "may involve" is thus applicable to the area of greatest need for counterespionage coverage.

In summary, I believe that the criminal standard as reported by the Intelli-

gence Committee, as does the whole bill, fully protects both our civil liberties and our national security, and I oppose any attempt to change it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. McCLORY).

The amendment was rejected.

AMENDMENT OFFERED BY MR. DRINAN

Mr. DRINAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DRINAN: Page 40, strike out lines 9 through 23 and insert in lieu thereof the following:

(3) (A) The Attorney General may not require any communication common carrier to provide the Government with any information, facilities, or technical assistance with respect to any electronic surveillance authorized under this subsection.

(B) Any communication common carrier voluntarily providing any such information, facilities, or technical assistance—

(i) shall maintain any records concerning the surveillance or any such assistance which such common carrier wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligance; and

(ii) shall be compensated for providing such information, facilities, or technical assistance by the Government at the prevailing rate.

Page 50, strike out lines 3 through 21 and insert in lieu thereof the following:

(B) that any communication common carrier, supplier of communications facilities or devices, landlord, custodian, or other person voluntarily providing to the Government any information, facilities, technical assistance, or access to premises with respect to the electronic surveillance shall maintain any records concerning the surveillance or any such assistance which such person wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligence; and

(C) that any such communication common carrier, supplier of communications facilities or devices, landlord, custodian, or other person voluntarily providing to the Government any information, facilities, technical assistance, or access to premises with respect to the electronic surveillance shall be compensated therefor by the Government at the prevailing rate.

Page 55, after line 22, insert the following new subsection:

(h) An order under this section authorizing electronic surveillance may not require any communication common carrier, supplier of communications facilities or devices, landlord, custodian, or other person to provide the Government with any information, facilities, technical assistance, or access to premises to accomplish the authorized surveillance.

Mr. DRINAN. Mr. Chairman, this amendment removes those provisions of H.R. 7308 which grant to the government the unprecedented authority to compel private citizens and corporations to provide unlimited assistance to intelligence agencies in all electronic surveillance related to foreign intelligence.

This amendment is commonly referred to as a "conscience clause," as it will permit any individual or corporation to follow its conscience and refuse to provide assistance to the Government in its surveillance activities. While every citizen owes some degree of loyalty to the U.S. Government, it is inconceivable that this loyalty extends so far as to embrace all matters related to electronic surveillance. The Government may spy if it must, but it does not have the right to force private citizens to help.

The Bell Telephone System strongly objects to this open-ended Government authority to force private individuals and corporations to provide assistance in surveillance activities. The Bell System has stated:

Certain language in the pending Senate and House bills could be interpreted to require greater telephone company involvement such as: the placing of all cross connections; the furnishing of monitoring equipment; the use of telephone company identification cards to gain access to customer premises; or even the use of telephone company personnel. We feel that such a direct role in electronic surveillance is in drastic conflict with our responsibility for safeguarding the privacy of our customers.

As presently worded, section 102 of H.R. 7308 gives the intelligence agencies a blank check with which they can elicit any kind of assistance they desire from private citizens. This is in contrast with the kind of authority which the Government possesses in its domestic electronic surveillance. There, the Government can require the provision of information as to cables and terminals and, when requested by the Government, a private line channel from the terminal serving the telephone line under investigation to a terminal serving the listening post used by law enforcement personnel. The same standard applies to foreign intelligence surveillance, based upon authorizations by the Attorney General.

Section 102 would give the intelligence agencies the power to compel telephone company personnel, private security officers, or others to actually install, connect, and operate the electronic listening devices. The Bell Telephone Co. clearly does not wish to become an active partner with the intelligence agencies. Their objections to the language of section 102 of H.R. 7308 cannot be discounted.

In a more general sense, there is serious doubt as to the need for the broad authority to compel assistance from private citizens which H.R. 7308 provides to the government. An individual or corporation which objects on moral or other grounds to a request by the government for aid in the establishment or operation of a wiretap should, if at all possible, be able to refuse. In most instances, the Government could find another individual to provide the needed assistance. The only exception which comes to mind is the telephone company, which has already demonstrated its willingness to help in the provision of access to cables and terminals. Removal of the compulsory nature of section 102 would not seriously jeopardize the ability of the Government to conduct surveillance, but it would remove a potentially dangerous capability to force citizens to aid in wiretapping.

Mr. Chairman, we are all familiar with the very strong feeling by the American people that Government has become too large and too intrusive into their lives. If we are really serious about limiting unnecessary intrusions by the Federal Government, we will adopt this amendment and remove the very objectionable and intrusive power which H.R. 7308 grants the intelligence agencies.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

(Mr. MURPHY of Illinois asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Illinois. Mr. Chairman, it is no secret the gentleman who offers this amendment considers electronic surveillance of any kind to be "dirty business." He has said this on many occasions. His position is well known. He now offers what he calls a conscience clause to this legislation.

In effect, he has put the decision as to whether or not foreign intelligence information will be collected not with the President, not with the judge but with private telephone companies or landlords or other people who have been ordered to cooperate with the Government. It should be self-evident that if common carriers or other persons cannot be compelled to help the Government in conducting lawful foreign intelligence surveillances, such needed intelligence will not be collected in this country. That result is not in the interest of the Government nor of the individuals which this amendment purports to protect nor of the protection of civil liberties.

Taking the last point first, the Government cannot be assured of the cooperation of common carriers and others under this amendment. The result will be many more inadvertent interceptions as agents search for the right wire. That is exactly what the gentleman seeks to avoid, among other things.

Mr. Chairman, the telephone company and others have not asked for this amendment. They are willing to cooperate with the Government on the basis of a statutory warrant. The bill gives them immunity if they cooperate under the terms of a court order or Attorney General's order. If, however, they are given the opportunity to determine whether they will cooperate or not, can it be said that they retain their immunity since they cooperate, if at all, under their own volition? Further, this amendment removes any directive language from an order under the bill. Yet, the immunity clause is tied to the order. It just does not make sense.

Mr. Chairman, this amendment also eliminates the requirement that surveillances under this bill be accomplished in such a manner as to protect their secrecy. I am sure that there is no doubt in the minds of Members that these surveillances involve very sensitive national security matters which must be safeguarded from compromise. Eliminating this language puts in doubt whether or not they will remain secret and must be opposed.

Mr. Chairman, the effect of this amendment is not to significantly improve any rights or privileges for U.S. citizens. On the contrary, what it really does is make it possible that inadvertent surveillances of U.S. persons will occur and that important foreign intelligence information will not be collected. That combination is a very objectionable one, and on those grounds, I urge its defeat.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

I would just like to commend the gentleman on his statement. I think he made a series of very important points in opposition to the gentleman's proposal. I think one of the most important is the immunity which is granted to these individuals, the landlords, and the telephone people. It might be well for the gentleman to emphasize to the House that these people, if they follow the instructions in the warrant, Mr. Chairman, are exempt from any liability; am I correct?

Mr. MURPHY of Illinois. If they perform their duties in good faith pursuant to the warrant, they are protected under the bill.

Mr. MAZZOLI. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts (Mr. DRINAN).

The question was taken; and on a division (demanded by Mr. DRINAN) there were—ayes 6, noes 35.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer my amendment No. 4 which appeared in the RECORD on August 2, 1978.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 33, line 3, insert "or property" after "life".

Mr. ASHBROOK. Mr. Chairman, my amendment would expand the definition of "international terrorism" by describing it in terms of "acts dangerous to human life and property." The definition, as presently written, only refers to acts "dangerous to human life."

Terrorism is a violent act against noncombatants for a political purpose. However, it does not have to be against a person. Terrorism can also involve violent acts directed toward property. For instance, if a terrorist group threatened to blow up the Washington Monument unless certain actions were taken by the U.S. Government, this activity should be considered under the definition as "terrorism." In addition, the group that bombs an empty building today, could bomb an inhabited one tomorrow. The intelligence agencies should not be prevented from electronic surveillance because no one has been killed yet.

Mr. MURPHY of Illinois. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the committee has examined this amendment. We have been in consultation with members of the Committee on the Judiciary and members of the Permanent Select Committee on Intelligence, and we neither support nor oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment entitled "amendment No. 1," which also appeared in the August 2, 1978, CONGRESSIONAL RECORD.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 31, line 17, strike out "or".

Page 32, after line 3, insert the following new subparagraph:

"(C) There is a reason to believe has information which relates to the foreign policy or security interests of the United States; or".

Mr. ASHBROOK. Mr. Chairman, the purpose of this amendment is to enable our intelligence services to gather information from foreigners who may have information that relates to the foreign policy or security interests of the United States.

There is no expectation by most foreigners that their electronic communications are secure in their own countries, let alone this one. Positive intelligence gathering is a common practice all over the world. There is no reason that our country should be denied this valuable tool.

I am not suggesting in any of my amendments that the intelligence agencies must target everyone who falls into a particular category. Only that they have the opportunity where necessary. I want to make sure that we do not lose vital intelligence because the person holding it falls through the cracks in this legislation. Under this bill those activities not specifically permitted are forbidden. Therefore, the authorization should be broad enough to cover any eventual need for intelligence purposes.

Mr. MAZZOLI. Mr. Chairman, I rise in opposition to the amendment.

H.R. 7308 contains two standards authorizing surveillance of agents of foreign powers who are not U.S. persons, neither of which requires a nexus with criminal activity.

Section 101(b)(1)(A)—page 31, lines 16 and 17—defines an agent of a foreign power as any non-U.S. person who acts in the United States as an officer, member, or employee of a foreign power. All the court does is determine if the person is in this status.

Section 101(b)(1)(B)—page 31, lines 18 to 25; page 32, lines 1 to 3—authorizes surveillance of a foreign visitor if the country for which the visitor acts engages in clandestine intelligence activity in the United States, and the foreign visitor is in a class that in the past has engaged in intelligence activities in the United States, or other circumstantial or direct evidence can show that the foreign visitor may engage in such activities in the United States. No specific showing has to be made about the activities of the particular foreign visitor to be surveilled. Thus, for example, a Soviet seaman entering one of the many U.S. ports open to him could be surveilled upon no other showing than that he is a Soviet seaman.

The gentleman's amendment would go further and allow surveillance by electronic means of any foreigner visiting the United States upon no other showing than someone's "reasonable belief" that the visitor has information relating to the foreign policy of the United States.

This is no standard at all. What, in today's world, does not relate to the foreign policy of the United States? Does not every conversation a Member of Congress has with a prominent foreign visitor relate to the foreign policy of the United States?

I oppose the gentleman's amendment.

In the first place, the existing executive branch guidelines, authored by Attorney General Levi, do not permit such indiscriminate surveillance of foreign visitors. The FBI does not now engage in such indiscriminate surveillances, has not for a long time, and does not now wish to do so. It has not asked for this amendment. In fact, the existing language was inserted at the insistence of the Bureau.

Second, such surveillances are largely nonproductive and not worth the expense and manpower involved. Any useful information that the nongovernment related foreign visitor may possess can better be obtained by means other than electronic surveillance conducted in the United States.

Third, there is the basic policy issue of whether the United States wishes to announce to all nations that any of their citizens visiting our shores, for whatever purpose, will be subjected to indiscriminate electronic surveillance. To answer that the Russians do it is to beg the questions, and it suggests our willingness to suspend those attributes of our democracy that in fact distinguish us from the Russians.

Fourth, to lower the bill's standards to authorize a surveillance of any foreign visitor "reasonably believed" to possess information relating to the national security or foreign relations of the United States is to suggest no standard at all, and would undermine a basic purpose of the legislation—to establish objective legislative standards to guide the actions of both executive officials and judges.

The amendment is not necessary.

It runs counter to bill's purpose to help restore integrity to actions of intelligence agencies.

Finally, as was the case in the Senate, the existing provision was written in direct response to FBI testimony.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. I thank the gentleman for yielding, and I asked the gentleman to yield so that I could ask him a question, actually, because, tracking the Ashbrook amendment with the recently adopted McClory amendment, the recently adopted McClory amendment takes non-U.S. persons out of foreign protection, throws them in this category, in any event, and I suspect that this is a totally meaningless, useless addition to the language of the bill.

Mr. MAZZOLI. Mr. Chairman, I think that is an interesting point which the gentleman brings up. I think it makes a further case. To sum up my time, Mr. Chairman, we have tried—and the gentleman from Ohio was there—to draft a bill which would leave the judges in the special court in a position where they had severe and understandable and focused guidelines to which they could re-

fer in determining the status of an individual, foreign power, U.S. person, visitor, what have you. I think the gentleman would expand that to sort of a subjective situation rather than the objective situation which we attempted to draft in our bill. We place the judge in the position of trying to crawl inside his head to find out what he is in America for, and I think it makes it much more difficult for the judge on the special court to do his job.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Ohio.

Mr. ASHBROOK. I thank the gentleman for yielding because I particularly wanted to respond to what my very learned colleague, the gentleman from Wisconsin (Mr. KASTENMEIER), has stated. There is only one problem with his argument.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has expired.

(By unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Mr. Chairman, I yield further to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. Mr. Chairman, there are two tracks to the bill, one relating to warrants and one relating to purposes for which there could be surveillance.

The McClory amendment changed the portion which related to warrants, but you still have standing those individuals or entities who can be surveilled, and that is why I am adding this. So it certainly is not meaningless. Without this amendment, as I read the bill, you would not be entitled to surveil them because they do not come under the area where you are authorized. That is the thing that bothers me most about this legislation. Anything which is not specifically authorized is prohibited. My amendment would authorize the surveillance of foreign nationals where the intelligence-gathering agency has reason to believe that they have information which relates to our security interests or which relate to espionage.

Mr. MAZZOLI. Mr. Chairman, without predetermining what the gentleman from Wisconsin might say in rebuttal, I would say that the amendment of the gentleman from Ohio might be understandable to him, and I am sure it could, if he were on the special court or in charge of these, be quite easy to apply subjectively.

But, it does seem to me that there is some very broad language in this amendment which is subjective and which require value judgments on the part of the individual who would be in charge of the warrant process or the surveillance. I think that is all we endeavored to avoid. I think we attempted to avoid that in the way we drew the bill, so that there would be very few opportunities to have subjective judgments, but there would be a referral to the guidelines.

Mr. ASHBROOK. What my colleague has said is absolutely correct. I think the only problem, looking at it from the intelligence gathering operations viewpoint, is that we cannot possibly put them in a position of having to know what they are going to get before they get it. Intelligence quite often is something that comes about piece by piece, and I do not think we can require that they absolutely know.

Mr. McCLORY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I think one of the most significant statements that has been made and one of the most important efforts which has been undertaken, at least as expressed by the majority of the committee, is that this a carefully crafted and a very carefully worked out piece of legislation. It seems to me the amendment offered now by the gentleman from Ohio really fills an obvious defect, an omission in the bill which on careful consideration should be included at this time.

This was brought out very forcefully to the subcommittee chaired by the gentleman from Wisconsin (Mr. KASTENMEIER) when the former Director of the CIA, Mr. Colby, appeared before the committee. He pointed out, as the gentleman from Ohio has pointed out, that if this is to be the legislation authorizing electronic surveillance of foreign agents and foreign powers, as the bill is now amended, then of course we should include these individuals, these officers, and these other persons who otherwise are excluded from the legislation. Mr. Colby stated in his testimony before the Judiciary Committee, as follows:

> The principal responsibility of our intelligence services is to learn and understand the political, strategic, economic, and sociological forces, factions and dynamics in the world around us . . . large numbers of citizens of such nations visit the United States and have information of this type in their minds. To the extent that these secrets are not available openly, I believe it only wise and prudent to endeavor to obtain such information from them clandestinely here in America rather than going abroad to search for it.

It is important to note that a change in the definition of "agent of a foreign power" to allow positive intelligence gathering does not mean that every friendly foreign tourist or businessman would be subject to electronic surveillance in the United States. Information about free and open countries can be collected through perfectly normal means of inquiry, through publications and otherwise, but it is only when these nations engage in secreting their information that we have to indulge in electronic surveillance.

So, that is why it is extremely important to our intelligence agencies that the definition of foreign agents be enlarged, as the amendment offered by the gentleman from Ohio would do, so that this legislation may truly assist our intelligence agencies.

It is certainly not going to adversely affect any interest whatever of any American citizen or any U.S. person. It is only directed at foreign agents, and it seems to me to limit the definition to the extent that we might be limited from engaging in legitimate electronic surveillance, especially with regard to important information we should have. I would hope that the amendment would be accepted by the majority.

Mr. Chairman, a serious flaw exists in the definition of "agent of a foreign power" in that officers and employees of a foreign power not so acting in the United States are excluded from the definition. In the Intelligence Committee's report on the definition, it is clearly spelled out that this omission is deliberate, as noted on page 34:

> The definition excludes persons who serve as officers or employees or are members of a foreign power in their home country but do not act in that capacity in the United States * * * It is not intended to encompass such foreign visitors as professors, lecturers, exchange students, performers or athletes * * * The term "member" means an active knowing member of the group or organization which is a foreign power. It does not include mere sympathizers, fellow travelers, or persons may have merely attended meetings of the group or organization.

This exclusion precludes executive officials from collecting valuable positive foreign intelligence in the United States from foreign scientists, professors and businessmen, and so forth. There is no evidence that any other foreign country so limits its intelligence capabilities, and, in fact, we do not so limit out capabilities abroad.

Former CIA Director, William Colby, in testimony before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, pointed out that intelligence has the important function of collecting positive information through the fortuitous presence here of foreigners. As Mr. Colby stated:

> The principal responsibility of our intelligence services is to learn and understand the political, strategic, economic, and sociological forces, factions and dynamics in the world around us * * * large numbers of citizens of such nations visit the United States and have information of this type in their minds. To the extent that these secrets are not available openly, I believe it only wise and prudent to endeavor to obtain such information from them clandestinely here in America rather than going abroad to search for it.

It is important to note that a change in the definition of "agent of a foreign power" to allow positive intelligence gathering does not mean that every friendly foreign tourist or businessman would be subject to electronic surveillance in the United States. Information about free and open countries can be collected through perfectly normal inquiry and assembly of publications, involving no clandestine effort whatsoever. Thus electronic surveillance would only be needed with respect to countries in which such material is held in secret.

It is clear that the exclusion of officers and employees from the definition of "agent of a foreign power" does nothing to protect the rights of American citizens, while it does, in fact, severely handcuff the Nation's foreign intelligence gathering capabilities. I, therefore, urge my colleagues to support the amendment that would allow positive intelligence gathering by the United States.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I appreciate the gentleman yielding, and I appreciate the sincere efforts he has been making over these past few months at trying to write a bill, but would the gentleman not agree virtually any foreign visitor to the United States from any foreign land whatever would under the terms of the gentleman's amendment be subject to surveillance?

Mr. McCLORY. I would say only to the specific extent the definition is enlarged. It seems to me we do want to include those individuals and engage in surveillance of them. It expands the definition and enlarges the scope for the intelligence agencies, as former Director Colby called to our attention we should do.

Mr. MAZZOLI. If the gentleman will yield further, with all due regard to Director Colby, that is his profession, and I would think any intelligence officer would want to include anybody in the universe that he could.

Mr. McCLORY. Let me point out that Mr. Colby is not in support of my substitute bill. He would support the amendment that the House has adopted but he would support this as well.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the existing Attorney General's guidelines do not permit the indiscriminate surveillance of foreign visitors that would be authorized by the Ashbrook amendment. A 1976 Justice Department memorandum states that the current policy of the Attorney General is to authorize warrantless electronic surveillance only when it is shown the subjects are the active conscious agents of foreign powers. This was the policy of former Attorney General Levi and it is the policy of the present Attorney General Bell.

I oppose the amendment.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I am sure my colleague did not mean to say the amendment would allow indiscriminate surveillance. It is only when there is reason to believe, and those administering the laws believe, and our intelligence agencies believe. I certainly hope the gentleman would not think it would allow indiscriminate surveillance.

Mr. MURPHY of Illinois. We are afraid that this is a door we would be opening, and the FBI does not want this. We specifically brought this up to them. I think the gentleman was there. They do not want this amendment.

Mr. ASHBROOK. Mr. Webster indicated he does not want this amendment?

Mr. MURPHY of Illinois. Definitely, on a number of occasions in discussing it with us in the committee and subcommittee.

Mr. ASHBROOK. I thank my colleague.

As I say, I hope the gentleman does not believe this would permit indiscriminate surveillance.

Mr. McCLORY. Mr. Chairman, I do not believe this amendment was offered in the committee. This was offered in the subcommittee during the testimony of former Director Colby when he pointed out a defect in the bill, and that is why the amendment was put together and why it is being offered. That is my understanding.

Mr. BOLAND. Mr. Chairman, if the gentleman will yield, would the gentleman from Ohio and the gentleman from Illinois agree that the existing provision which is now in this bill was written in direct response to the testimony of the Federal Bureau of Investigation?

Mr. McCLORY. Mr. Chairman, I do not know who wrote the provision. I know we had a lot of input as far as the language is concerned.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment was rejected.

AMENDMENTS OFFERED BY MR. ERTEL

Mr. ERTEL. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendment offered by Mr. ERTEL:

Page 41, line 2, strike out "the Special Court having jurisdiction under section 103" and insert in lieu thereof "a United States district court".

Page 41, line 8, strike out "Special Court" and insert in lieu thereof "court".

Page 41, strike out line 13 and all that follows down through line 2 on page 44 and insert in lieu thereof the following:

JURISDICTION

SEC. 103. (a) The United States district courts shall have jurisdiction to receive applications for court orders under this title and to issue orders under section 105 of this title.

(b) Proceedings under this title shall be conducted as expeditiously as possible. If any application to the United States district court is denied, the court shall record the reasons for that denial, and the reasons for that denial shall, upon the motion of the party to whom the application was denied, be transmitted under seal to the United States court of appeals.

Page 52, line 14, strike out "a judge designated pursuant to section 103" and insert in lieu thereof "a judge having jurisdiction under section 103".

Page 55, beginning on line 19, strike out "shall be retained" and all that follows down through line 22 and insert in lieu thereof "shall be retained for a period of at least ten years from the date of the application and shall be stored at the direction of the Attorney General under security procedures approved by the Director of Central Intelligence.".

Page 58, line 16, strike out "Special Court" and insert in lieu thereof "court".

Page 58, beginning on line 17, strike out "Unless all the judges of the Special Court are so disqualified, the" and insert in lieu thereof "The".

Page 58, line 23, strike out "Special Court" and insert in lieu thereof "court".

Page 58, line 25, strike out "Special Court" and insert in lieu thereof "court".

Page 59, line 7, strike out "Special Court" and insert in lieu thereof "court".

Page 59, line 24, strike out "Special Court of Appeals" and insert in lieu thereof "United States court of appeals".

Page 60, line 11, strike out "Special Court of Appeals" and insert in lieu thereof "court of appeals".

Page 60, line 17, strike out "Special Court" and insert in lieu thereof "court".

Page 60, line 18, strike out "Special Court of Appeals" and insert in lieu thereof "court of appeals".

Page 60, line 24, strike out "Special Court" and insert in lieu thereof "court".

Page 60, line 25, strike out "Special Court of Appeals" and insert in lieu thereof "court of appeals".

Page 61, beginning on line 7, strike out "Special Court or Special Court of Appeals" and insert in lieu thereof "district court or court of appeals".

Page 61, line 11, strike out "Special Court of Appeals" and insert in lieu thereof "court of appeals".

Mr. ERTEL. Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. ERTEL. Mr. Chairman, I ask unanimous consent that I present this second amendment inasmuch as it crosses jurisdictional lines. On page 5 of the typed amendment it goes into title III as well, in one section.

The CHAIRMAN. Is the gentleman asking that the amendments be considered en bloc?

Mr. ERTEL. That is correct, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The Clerk will report the remaining amendment.

The Clerk read as follows:

Amendment offered by Mr. ERTEL: Page 68, beginning on line 14, strike out "the designation of the chief judges pursuant to section 103 of this Act" and insert in lieu thereof "such date of enactment".

Mr. ERTEL (during the reading). Mr. Chairman, I ask unanimous consent that the remaining amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

(Mr. ERTEL asked and was given permission to revise and extend his remarks.)

Mr. ERTEL. Mr. Chairman, I would like to explain so the Members will understand what has happened and that is that the first four pages of the amendment, as offered, go to title I, and page 5 of the typed amendment, inasmuch as the operational date of the bill depends on the establishment of the court, it would strike the section relating to that and make it effective upon enactment. That is why I made the unanimous consent request. So that there are really two different provisions, one is title I, one is title III.

The amendment basically is to strike from the bill the provision providing for the special courts under the bill. We will be establishing a special court to sit in the District of Columbia. Each chief judge of each circuit will designate a person who will sit here on the special court and will be here on a rotating basis and will decide on applications for surveillance or wiretapping warrants. Inasmuch as the amendment offered by the gentle-

man from Illinois (Mr. McCLORY) has been agreed to, which eliminates the need for the warrants for foreign nationals and foreign embassies and foreign trade missions, there is no reason to have this special court sit.

As I understand it, within the past few years there have only been two wiretaps on American citizens. So, for the few events, we are creating a special court to sit here in the District of Columbia, having a judge here at all times who may be designated from California, Oregon, or some other place, requiring this 11-man court to be impaneled at all time requiring a separate court of appeals, and then for having separate appeals to the Supreme Court. It is to have a special court for this limited purpose.

But, that is not my major objection to this special court, my major objection to this special court, assuming it were used, on a regular basis, then this special court concentrates in one point all of our counterintelligence activities as far as the collection of information concerning what is happening and what has happened in the past, thus all warrants would have to pass through this court. If this particular court were penetrated by any other intelligence operation in the world they would have complete knowledge of our entire counterintelligence operations.

So, Mr. Chairman, it would seem to me that one of the fundamentals of intelligence collection is not to concentrate this information but to disperse it so that the other counterintelligence people do not know where to concentrate their own efforts. Under this bill the information would be all concentrated in this court, and anyone who penetrated it would know all of our intelligence operations.

What my amendment would do is say, look, we have a court system, let us use it. You go to the district judge, he puts it under seal. He handles it secretly and the appeals lie with the circuit court of appeals in that district, going right on up the line.

I am not particularly wild about this warrant procedure that has been set up in the bill, but if we are going to have it, then it seems to me we should disperse it across the Nation.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. ERTEL. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, I commend the insight of the gentleman, now that the McClory amendment has been agreed to there will be very little for this court to do. But now it is not needed, under the changed procedure, we do not need these courts, as the gentleman from Pennsylvania pointed out, for foreign intelligence or foreign powers, so, how many Americans are going to be subject to the CIA and the FBI only for intelligence reasons? I would add an additional reason for abolishing the courts is because they will have very little to do for the courts under the bill as it has been amended.

Mr. ERTEL. I agree with the gentleman and thank him for his comments.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendments.

(Mr. MURPHY of Illinois asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Illinois. Mr. Chairman, the special court is better than using existing district courts for reasons of both security and civil liberties.

By restricting the number of judges who are exposed to this material, it reduces risks. By centralizing the court in Washington, it enables cleared executive personnel to be present to assist the court in clerical functions, and it enables one secure repository for records, rather than using the insecure facilities of ordinary district courts and clerks around the country. It also insures that where speed is of the essence, a judge is immediately available, rather than perhaps 3,000 miles away.

From a civil liberties point of view, the court minimizes the ability of the executive to go judge shopping. Also, because these judges—who are existing Federal judges, not new ones—will have some experience with these applications. they are not as likely to be bowled over by the executive waving the banner of national security in a questionable case as a judge who has never dealt with such an application before.

Furthermore, there is ample precedent for such a special court. The temporary Emergency Court of Appeals was set up in 1970 by the Economic Stabilization Act to hear appeals from wage and price decisions. It is still in existence, hearing appeals from certain Department of Energy decisions.

Mr. Chairman. this special court is composed of Federal judges designated by the Chief Justice.

Finally, as the committee report notes, the establishment of a special court was said to be necessary by the General Counsel of the Administrative Office of the U.S. Courts for jurisdictional reasons.

Mr. Chairman, the FBI, the CIA, the National Security Council, and the Administrative Office of the U.S. Courts are the ones who requested the special court. The idea was to minimize any leaks that may occur if an official from the executive department had to travel to any outlying districts in the United States, in which case we would have the question of personnel not being cleared for security reasons. We would have the question of filing of papers in a clerk's office where there was no security for the papers or for the application for the order.

The bill would provide one court here in Washington where we could set up secure files in a safe and where only certain personnel could have access to those files. We would have one judge at one time sitting in Washington on an emergency basis.

Mr. Chairman, it has been suggested that with the adoption of the McClory amendment, we will not have much business here in Washington for this special court. This may be the case, but we will have a judge at all times.

For instance, if the FBI's Counterintelligence Department gets information from the NSA or the CIA that a Russian spy is meeting in some spot in the United States, under the bill they are allowed to install a surveillance for 24 hours. However, after that 24 hours, they have to apply to the special court if it involves an American citizen.

All we are providing for with this special court in Washington is the accessibility to that Federal judge to cleared personnel to assist him in handling the application and any secret, sensitive material that is presented to the court.

By dispersing this setup throughout the land, the very thing which the gentleman from Illinois (Mr. McCLORY), the gentleman from New York (Mr. STRATTON), and others have argued here today about security risks in bringing these matters before judges who are unsophisticated in intelligence affairs will be doubled or amplified tenfold.

Mr. ERTEL. Mr. Chairman, will the gentleman yield?

Mr. MURHPY of Illinois. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, may I ask the gentleman this question: Is it not true that under the existing law, the Official Secrets Act of 1968, I believe, we, in fact, do issue warrants in domestic criminal cases which remain secret and undisclosed except when required under that particular statute?

Mr. MURPHY of Illinois. That is correct.

Mr. ERTEL. Does the gentleman know of any compromise of that system which existed in the United States since the enactment of that law?

Mr. MURPHY of Illinois. No, but it was the FBI, the CIA, the National Security Council, and officials in the FBI who requested this setup. They had security concerns about these matters.

Mr. ERTEL. Does the gentleman know of any specifically?

Mr. MURPHY of Illinois. I know of none specifically. I am just quoting their testimony to us.

Mr. ERTEL. In fact, do they not go to the judge and meet with him and get the order? And is it not a fact that one of the doctrines of intelligence gathering is to try and disperse your information; do not keep your eggs all in one basket so that you do not lose everything if you get that one basket penetrated?

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. MAZZOLI, and by unanimous consent, Mr. MURPHY of Illinois was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

I would just like to make a point. I was listening to the discussion of the gentleman from Pennsylvania (Mr. ERTEL) in which he was saying that apparently the court processes work very well in domestic warrant procedures, and on the other hand he says let us get rid of the courts because they will not work in the other case. In one case he is saying we

have great confidence; there have been no leaks and no problems in dispersing it. On the other hand, he says get rid of the courts. I think the gentleman cannot have it both ways.

It seems to me we are saying that if the gentleman from Illinois and I on our side carry the day, we are saying that the court procedure is a great guarantee, the best one we could think of to guarantee the rights of the American citizens and at the same time not put any unnecessary impediment into the path of intelligence-gatherers. That is all we are saying.

Mr. MURPHY of Illinois. There is no question that security and protection for the intelligence community is the reason that this provision is in the bill.

Mr. ERTEL. Mr. Chairman, will the gentleman yield, since my name was mentioned?

Mr. MURPHY of Illinois. I yield to the gentleman from Pennsylvania.

Mr. ERTEL. I thank the gentleman for yielding.

I would like to clarify, since the gentleman stated my position, quite frankly we do have a security risk if all of our information is in one court. Why? Because they attempt to penetrate that court. If it is spread over the entire nation, our security risk is less because they do not know where to go. That is the problem they would have.

Secondly, you know, we have got pretty good security in all our district courts because we have not had a compromise, but if we concentrate it and give them the target—and that would be this court here in Washington, D.C.—then they will concentrate on trying to penetrate it. So I think to put it back into the district courts is an excellent point.

Secondly, with all the district court judges, is the gentleman trying to say that we cannot find a secure district court judge in these United States? I think we can.

Mr. MURPHY of Illinois. I am not trying to say that at all. I appreciate and respect the gentleman's viewpoint, but I respectfully disagree.

Mr. KASTENMEIER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment. I do so mindful that both the gentleman from Pennsylvania (Mr. ERTEL) and the gentleman from Massachusetts (Mr. DRINAN) are esteemed members of my Subcommittee on Courts, Civil Liberties, and the Administration of Justice. I believe that the Select Committee on Intelligence has worked out a necessary formula for the court structure to handle these applications, and I am aware of the fact that they have come to learn that one of their witnesses, Carl Imlay, General Counsel of the Administrative Office of the U.S. Courts, stated that constitutional problems existed with respect to granting nationwide jurisdiction to individual judges. Drawing on the example of the temporary Emergency Court of Appeals, it is suggested that a special court be created and vested with the jurisdiction in Federal judges assigned to it, and that is what they have done.

It also should be pointed out that in the Keith case it is not just contemplated by the committee itself. The Supreme Court said that a warrant in intelligence cases need not be based on the same type of standards and procedures required for law enforcement. In doing so the Court stated the request for prior court authorization could in sensitive cases be made to any member of a specially designated court. That is what has been provided here. But the question of forum shopping, finding a secure U.S. District court judge throughout the United States of 4 or 500—and after the judgeship bill there will be far more than 500 of them—may be possible, but if we are concerned about the people affected by this, such forum shopping would be the last thing on the Earth that we would want done in terms of the Government.

On the other hand, the Government has an interest in a secure court. This court can be provided in the District of Columbia. Just as the White House itself and the CIA are secure presumably, so this court will be made secure.

I think the formula provided by the bill is a reasonable one and should be supported. This is one of the particular ways in which the House committee bill is much better than that of the Senate.

Mr. ECKHARDT. Mr. Chairman, I move to strike the last word, and I rise in support of the amendments.

Mr. Chairman, I am not persuaded that we need a special court because our existing courts are not adequate to make the decisions here involved. I think that one of the bulwarks of our system in this country rests on tradition of judicial process, and I think that the reason that tradition of judicial process works is because cases are brought before judges experienced in trying all types of cases.

I understand that a special court would be nominated in each of the circuits, and that the ultimate selection then would be by the Chief Justice of the Supreme Court. I see no reason why the Government could not find at least one secure and dependable judge within a district of the United States. If need be, one could be appointed in each of those circuits for the purpose, but to appoint a new court, a group of persons who may try one case within a period of a year or two and then try no more, men who are not experienced in the general judicial process, it seems to me, would be a dangerous process.

I do not like special courts. Special courts throughout history have been courts which are amenable to tyranny. The thing that protects our Nation from tyranny, it seems to me, is the custom, the practice, and the experience of judges to operate within due process of law. A special court appointed for a special purpose is simply not as dependable in enforcing that kind of process as are judges who are sitting for general purposes.

Mr. KASTENMEIER. Mr. Chairman, would the gentleman yield on that point?

Mr. ECKHARDT. Surely, I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Chairman, I wish to make this point, because I think there is a misapprehension as to what the bill provides.

These judges to be appointed for the special court are indeed district judges of general jurisdiction who are temporarily assigned for this purpose. They are rotated, and when they are rotated, they go back to their circuits. But they are not special for this purpose in any permanent sense. They are temporary, and they are assigned to the special courts ordinarily through general competence.

Mr. ECKHARDT. Mr. Chairman, may I reply and ask this: How long do they serve once they have been appointed, and how frequently do they rotate?

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, my understanding is that they could serve for only 6 years, and they could only serve two terms. They could serve no more than two terms.

Mr. ECKHARDT. Mr. Chairman, after 12 years, that makes a man pretty much a person of a special court.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, the gentleman's argument is very sound, and the gentleman's argument is entirely consistent with the constitutional structure under which our courts are established.

The gentleman from Wisconsin (Mr. KASTENMEIER) has a misapprehension of what this bill provides, because originally there was provision for the appointment of special judges, and the administrator of the Federal court system advised the committee that we could not have special judges. Consequently, they changed the concept from a special judge to a special court, with this kind of unprecedented type of procedure for appointing these 11 judges from the 11 circuits through the operation of the judicial conferences in these cases which, as I understand it, have no authority whatever to designate any special members of a special court.

I do not know whether this is a title I or a title III court. Nobody could explain. It is provided in legislation which is related to the whole subject of national security, and it seems to me that this is the other part of the bill which should be eliminated because, as I might state further, since it was testified earlier in the year that there were no Americans who were subject to electronic surveillance, and later the Attorney General did notify our committee that one American had been subjected to electronic surveillance.

The CHAIRMAN. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

(On request of Mr. McCLORY and by unanimous consent, Mr. ECKHARDT was allowed to proceed for 1 additional minute.)

Mr. McCLORY. But certainly this case, or any case, for that matter, involving a U.S. person, can be adequately and competently taken care of, just as title III cases for warrants for domestic

surveillance are taken care of at the present time by the district courts.

Mr. ECKHARDT. Do I understand, in order to clarify the terms of the bill and some of the questions that were asked me, that the selection may be a total of 6 years, during which time the judges engage in this activity alone?

Mr. McCLORY. That is correct.

Mr. KASTENMEIER. Mr. Chairman, if the gentleman will yield, that is not the understanding as I have been informed. You have 11 judges, one selected from each circuit, and one of them at a time serves in the District of Columbia on these cases. There are not that many cases. And that judge may serve temporarily for a period of 2 months, 4 months, and he is rotated out and another judge comes in. So when we are talking about a special court we should understand what is contemplated in terms of service of a judge. This is a judge of general jurisdiction, a U.S. district judge from each of the 11 circuits.

Mr. ECKHARDT. For how long a period of time is he assigned to a court? That is what I am trying to get at.

Mr. KASTENMEIER. He is assigned for a period of 6 years, but during that 6-year period he will sit in Washington by himself for a short period of time, perhaps 2 months, 4 months, and then be rotated off, and one of the other 10 colleagues would serve.

Mr. ECKHARDT. But he will be the exclusive judge for this purpose?

Mr. KASTENMEIER. That is correct; for that period of time.

Mr. ECKHARDT. During the period of 6 or 12 years. I still think that is unnecessary.

Mr. McCLORY. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong support of the amendment.

Mr. Chairman, this strikes me as being a very important amendment for the Committee to adopt, because if there is a part of the bill which, it seems to me, is not only unprecedented but undesirable, it is this section which provides for the establishment of the special court.

A I indicated, there was an attempt, first of all, to assign special judges and, presumably, it was thought that if we had some special judge somehow or other they could be relied upon to provide approval for electronic surveillance such as the intelligence agencies might request. But then when the committee was informed that there was no authority for special judges in the Federal court system, this concept of a special court arose. There have been a number of variations of this provision proposed.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, I am happy to concur in the gentleman's judgment. I voted against the McClory amendment, but I think the gentleman from Illinois (Mr. McCLORY) is right on target now. This would be a total alteration of the structure of the Federal courts. I think it would be a misuse.

Mr. Chairman, I concur in the statement made by the gentleman from Texas (Mr. ECKHARDT).

Mr. BOB WILSON. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from California.

Mr. BOB WILSON. Mr. Chairman, did I really hear correctly the colloquy a few minutes ago in which it was stated that a special court would be set up here in the District of Columbia and judges would be brought here in rotation every month or two?

I suppose they would have to be brought every month or two, because they would go stir crazy because they have had nothing to do. They have only had one case in the last year or 2 years to even consider, so this is a ridiculous situation. I am fully in support of the amendment.

Mr. McCLORY. No one has any idea how long or how short a time they would sit here.

Mr. BOB WILSON. Or how expensive it would be.

Mr. McCLORY. This is a completely new concept. There is nothing constitutionally which authorizes a special court. As the gentleman from Texas (Mr. ECKHARDT) pointed out, we should be wary of special courts which have special prerogatives. It seems to me that when we designate by the Constitution a district judge, we empower that district judge to hear and entertain all types of cases, and to say that the rest of the judiciary cannot hear applications for warrants to engage in electronic surveillance of U.S. persons—except these special judges who may be considered patsies for some executive, it would seem to me to be a miscarriage of justice.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I wish to read the language in section 103, which is the only language in the bill having to do with this question of special judges and their tenure:

> There is established a Special Court of the United States with jurisdiction throughout the United States to carry out the judicial duties of this title. The Chief Justice of the United States shall publicly designate at least one judge from each of the judicial circuits, nominated by the chief judges of the respective circuits, who shall be members of the Special Court and one of whom the Chief Justice shall publicly designate as the chief judge. The Special Court shall sit continuously in the District of Columbia.

Now, there is nothing in that language that says that these judges will continue with their duties elsewhere. I recognize that there is some language to that effect in the committee report, but it seems to me that we are setting afoot at least the possibility of a court which deals in only this subject matter. I think that is extremely dangerous.

Mr. McCLORY. The gentleman is correct. Let me say that if an application for electronic surveillance was made to a court in some other area of the country, because it was desired there, nevertheless it would be necessary to come to Washington, D.C., in order to have that application acted upon.

Mr. BOB WILSON. Mr. Chairman, if the gentleman will yield further, does the gentleman know whether any testimony was submitted from the administrator of the courts as to the costs of this special court? How many personnel would be there to justify the court?

Mr. McCLORY. It would be entirely speculation on that. Nobody knows how long or when such a special court might sit. That would depend entirely upon how many applications for warrants were provided for. Apparently, if the bill is only going to apply to U.S. persons, there are going to be virtually none.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendments.

The CHAIRMAN. The gentleman has already spoken.

Mr. MURPHY of Illinois. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Illinois (Mr. MURPHY) will be recognized for 5 minutes.

There was no objection.

Mr. MURPHY of Illinois. Mr. Chairman, I refer the gentleman from Texas to the language of the bill itself. It says that the court will sit continuously, not the judge. I think that is an important distinction. The court will be in existence; the judges are rotated.

That was the testimony before the committee, that they envision the judges sitting about a month or 2 months, and we asked what kind of court this would be. Would this require more than one? The response was that in the last year or two there have only been two cases, so I think this is a lot to do about nothing. The court will sit continuously; there will be rotating judges, the remaining judges will be hearing cases continuously back in their districts.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. My recollection is a little dim, but it seems to me that at some point in our hearings we propounded these questions to our witnesses, who suggested that the judges should come to the District of Columbia to sit on the special court, which meets continuously, and could also hear other cases. They are competent for the jurisdiction, and they could be asked to sit in on the District of Columbia Appellate Court.

Mr. MURPHY of Illinois. The gentleman is correct.

Mr. MAZZOLI. That means—and it might answer the charge raised by the gentleman from California (Mr. BOB WILSON)—the cost will be minimal, because these jurists will be doing other work in addition to this.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Pennsylvania (Mr. ERTEL).

The question was taken; and the Chairman being in doubt, the Committee divided, and there were—ayes 74, noes 33.

RECORDED VOTE

Mr. MAZZOLI. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered .

The vote was taken by electronic device, and there were—ayes 224, noes 103, not voting 105, as follows:

[Roll No. 728]

AYES—224

Akaka	Gaydos	Myers, Gary
Ambro	Gilman	Myers, John
Anderson, Calif.	Goldwater	Natcher
	Gonzalez	Neal
Andrews, N. Dak.	Goodling	Nedzi
	Gore	Nowak
Applegate	Gradison	Oakar
Archer	Grassley	Oberstar
Ashbrook	Gudger	Ottinger
AuCoin	Guyer	Panetta
Badham	Hagedorn	Pease
Bafalis	Hall	Perkins
Baucus	Hammer-schmidt	Pickle
Bauman		Poage
Beard, R.I.	Hanley	Preyer
Bedell	Hannaford	Pritchard
Benjamin	Heftel	Pursell
Bennett	Hillis	Rahall
Bevill	Holland	Regula
Bonker	Hollenbeck	Rinaldo
Breaux	Holt	Risenhoover
Brown, Mich.	Holtzman	Roberts
Brown, Ohio	Horton	Robinson
Broyhill	Hubbard	Roe
Buchanan	Ichord	Rousselot
Burgener	Jacobs	Roybal
Butler	Jenrette	Rudd
Carney	Johnson, Calif.	Runnels
Carter	Jones, N.C.	Ruppe
Cavanaugh	Jones, Okla.	Sarasin
Cederberg	Jones, Tenn.	Satterfield
Chappell	Jordan	Sawyer
Clausen, Don H.	Kazen	Schroeder
	Kelly	Schulze
Cleveland	Kildee	Sebelius
Cohen	Kostmayer	Selberling
Coleman	Krebs	Shuster
Collins, Ill.	Lagomarsino	Simon
Collins, Tex.	Latta	Skelton
Conable	Le Fante	Smith, Nebr.
Conyers	Leach	Snyder
Corcoran	Lederer	Spence
Coughlin	Lent	St Germain
Crane	Livingston	Staggers
Cunningham	Lloyd, Tenn.	Stangeland
D'Amours	Lott	Steed
Daniel, Dan	Lujan	Stratton
Daniel, R. W.	Luken	Taylor
Davis	McClory	Thornton
de la Garza	McCormack	Treen
Delaney	McDonald	Trible
Dent	McEwen	Udall
Devine	McFall	Vander Jagt
Dicks	McHugh	Vento
Dingell	McKay	Waggonner
Drinan	McKinney	Walgren
Duncan, Tenn.	Madigan	Walker
Eckhardt	Maguire	Walsh
Edgar	Mahon	Wampler
Edwards, Ala.	Marlenee	Watkins
Edwards, Okla.	Marriott	Weaver
Emery	Martin	Weiss
English	Mathis	White
Ertel	Michel	Whitehurst
Evans, Del.	Mikulski	Whitley
Evans, Ga.	Milford	Whitten
Evans, Ind.	Miller, Ohio	Wilson, Bob
Findley	Minish	Wilson, Tex.
Flippo	Mitchell, N.Y.	Winn
Flood	Mollohan	Wolff
Flynt	Montgomery	Wylie
Foley	Moore	Yatron
Ford, Tenn.	Moorhead, Calif.	Young, Fla.
Fountain		Young, Mo.
Frenzel	Mottl	Zeferetti
Fuqua	Murphy, Pa.	
Gammage	Murtha	

NOES—103

Addabbo	Clay	Fowler
Alexander	Conte	Gephardt
Annunzio	Corman	Giaimo
Aspin	Cornell	Ginn
Baldus	Cotter	Glickman
Biaggi	Danielson	Green
Bingham	Dellums	Hamilton
Blanchard	Derrick	Harkin
Blouin	Derwinski	Harris
Boland	Dodd	Heckler
Bolling	Downey	Howard
Bonior	Early	Hughes
Brademas	Edwards, Calif.	Jenkins
Breckinridge	Eilberg	Kastenmeier
Brinkley	Fascell	Keys
Brodhead	Fenwick	LaFalce
Brown, Calif.	Fisher	Leggett
Burlison, Mo.	Fithian	Levitas
Burton, John	Florio	Lloyd, Calif.
Carr	Ford, Mich.	Long, La.
Long, Md.	Patten	Spellman
Lundine	Patterson	Steers
McDade	Pike	Stokes
Mann	Price	Studds
Markey	Rangel	Thompson
Marks	Reuss	Tucker
Mattox	Rodino	Vanik
Mazzoli	Roncalio	Volkmer
Metcalfe	Rose	Waxman
Mineta	Rosenthal	Whalen
Moorhead, Pa.	Russo	Wright
Murphy, Ill.	Santini	Yates
Myers, Michael	Scheuer	Zablocki
Nolan	Sharp	
Obey	Solarz	

NOT VOTING—105

Abdnor	Frey	Pressler
Ammerman	Garcia	Quayle
Anderson, Ill.	Gibbons	Quie
Andrews, N.C.	Hansen	Quillen
Armstrong	Harrington	Railsback
Ashley	Harsha	Rhodes
Barnard	Hawkins	Richmond
Beard, Tenn.	Hefner	Rogers
Beilenson	Hightower	Rooney
Boggs	Huckaby	Rostenkowski
Bowen	Hyde	Ryan
Brooks	Ireland	Shipley
Broomfield	Jeffords	Sikes
Burke, Calif.	Johnson, Colo.	Sisk
Burke, Fla.	Kasten	Skubitz
Burke, Mass.	Kemp	Slack
Burleson, Tex.	Kindness	Smith, Iowa
Burton, Phillip	Krueger	Stanton
Byron	Lehman	Stark
Caputo	McCloskey	Steiger
Chisholm	Meeds	Stockman
Clawson, Del	Meyner	Stump
Cochran	Mikva	Symms
Cornwell	Miller, Calif.	Teague
Dickinson	Mitchell, Md.	Thone
Diggs	Moakley	Traxler
Dornan	Moffett	Tsongas
Duncan, Oreg.	Moss	Ullman
Erlenborn	Murphy, N.Y.	Van Deerlin
Evans, Colo.	Nichols	Wiggins
Fary	Nix	Wilson, C. H.
Fish	O'Brien	Wirth
Flowers	Pattison	Wydler
Forsythe	Pepper	Young, Alaska
Fraser	Pettis	Young, Tex.

Mr. OTTINGER and Mr. WOLFF changed their vote from "no" to "aye."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

Mr. MURPHY of Illinois. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. WRIGHT) having assumed the chair, Mr. YATES, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7308) 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, had come to no resolution thereon.

GENERAL LEAVE

Mr. MURPHY of Illinois. Mr. Speaker, I ask unanimous consent that all Members may be permitted to revise and extend their remarks, and include extraneous matter, on H.R. 7308, the bill just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

PERMISSION FOR COMMITTEE ON WAYS AND MEANS TO HAVE UNTIL MIDNIGHT, MONDAY, SEPTEMBER 11, 1978, TO FILE REPORT, ALONG WITH ANY SEPARATE OR MINORITY VIEWS, ON H.R. 13750, SUGAR STABILIZATION ACT OF 1978

Mr. VANIK. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means may have until midnight, Monday, September 11, 1978, to file a report, along with any separate or minority views, on the bill (H.R. 13750) to implement the International Sugar Agreement between the United States and foreign countries; to protect the welfare of consumers of sugar and those engaged in the domestic sugar-producing industry; to promote the export trade of the United States; and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

SALT PACT ILLUSTRATES NEED FOR BRICKER AMENDMENT

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute.)

Mr. ASHBROOK. Mr. Speaker, the upcoming debate on the SALT agreement once again illustrates the need for swift enactment of the Bricker amendment. This important amendment which I am sponsoring would put constitutional safeguards on the use of executive agreements in conducting foreign policy.

As you may have read, the Carter administration is considering the possibility of submitting the SALT accord as an executive agreement requiring only a simple majority vote in Congress. This would get around the two-thirds vote needed for passage of a treaty. The goal, of course, would be to avoid a difficult battle for ratification such as occurred during the recent Panama Canal debate.

That the Carter administration would even consider this tactic is incredible. It is a thinly disguised attempt to evade the normal treatymakng process.

Call it what you will, the SALT agreement should require a two-thirds vote for ratification. It is too important an issue to be handled in a cavalier manner by President Carter.

We should call a halt to this game of words. Congress must not abdicate its responsibility on a matter as crucial as the security of our Nation.

The Bricker amendment which I have introduced for the past several Congresses would erect a safeguard for this type of problem. An executive agreement would be handled like a treaty. The name, whether the President calls it a treaty or an executive agreement, would not change the necessity of receiving a two-thirds vote.

The Bricker amendment would prevent unnecessary delegation of power by Congress to the President. It would help restore a proper congressional role in foreign affairs. It is time that this

important amendment was added to our Constitution.

THE LAST CLEAR CHANCE TO AVOID A COMMUNIST TAKEOVER IN RHODESIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. SIKES) is recognized for 30 minutes.

● Mr. SIKES. Mr. Speaker, the free world is confronted with its last clear chance to avert a bloodbath and a Communist takeover in Rhodesia. I am convinced of this following recent talks in that country with officials of several ministries and the U.S. Government.

Only the United States and Britain in the Western World now seem concerned. This interest still is directed more to bringing guerrilla leaders into the coalition than to helping the coalition establish an impressive record. Confidence in the government has deteriorated and it now appears necessary to bring one or both of the so-called patriotic front movements into the government to prevent a civil war which experts say could not be won by government forces.

Obviously it is important that we devote stronger efforts to shoring up the coalition while negotiations continue with guerrilla leaders. Nothing would have been more painful than recognition and an exchange of ambassadors. Apparently this is not being considered.

The entire situation is much too reminiscent of the Vietnam experience which Americans sadly remember.

The guerrilla leaders Mugabe, based in Mozambique, and Nkomo, in Zambia, have conducted terrorist raids in Rhodesia for many months. Now they are training larger forces for invasion when the time is ripe. Both are heavily supplied with Russian weapons. Cuban advisers and Russian experts have been identified as aiding them. At one time the Chinese were involved. This is no longer certain.

The guerrillas now have infiltrated most of Rhodesia and out of fear many local residents are quietly supporting them.

Rhodesian troops are effective but they cannot be everywhere at once and terrorist raids are becoming more effective, killing, and burning. At present the coalition government is not reaching the black populace, who want more evidence of change to black control. The people are becoming more and more resigned to a take-over by Nkomo or Mugabe supporters. Rhodesian officials feel strongly that British and United States are to blame for their country's problems. Some of them still hold the view that they can win despite today's gloomy prospects and delay a take-over by the foreign based blacks.

Nkomo and Mugabe are gaining converts rapidly. Support is falling away from the coalition. The government says it is through fear of reprisal—others say it is because of lack of action by Rhodesian Government following the establishment of a coalition. Probably both are contributing factors.

There is the possibility the civil war will find the forces of Nkomo and Mugabe pitted against each other as well as against the Rhodesian Government forces. Such a development would leave the country almost totally destroyed and the white population killed or driven out.

The black nations which fear the spread of Communism are reluctant to speak out against the establishment of another black government, regardless of its leanings.

An election to establish a new government has been promised in December but there has been talk of postponement. To postpone the election would add fuel to the cause of Nkomo and Mugabe. Delay in writing a new constitution and submitting it to a vote will have a similar effect.

Unless there is an early move to meet black aspirations there will be an explosion which quickly can be destructive to an industrious and progressive country. Many of the whites are reluctant to accept the inevitability of change and are unwilling to share power.

The irony of the situation is that neither Nkomo nor Mugabe would offer the one man, one vote ideal of the West, which the West has been seeking to bring about in Rhodesia. Neither has indicated he would provide a true majority government.

In summary, Rhodesia is harassed from within by increasing terrorist attacks, threatened by civil war, and pressured by economic sanctions by the United States and other nations. We helped to create the situation and the Russians are taking advantage of it.

We should portray the Russian involvement in its true colors as another attempt to seize territory and control the lives of people. There is no excuse for U.S. ineptitude in dealing with Communist aggression. It has been demonstrated in Rhodesia. Time is running out for our interests. Only an immediate and vigorous and more meaningful effort will prevent Communist control there.●

THE MOOD OF THE 20TH

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

● Mr. GOLDWATER. Mr. Speaker, I am always gratified to return to my district during a recess of the Congress to discuss the concerns of my constituents. During the past 2 weeks I have had the opportunity to talk with the people of the 20th Congressional District in California about their priorities for Congress in these closing weeks of our term.

We have been given a tall order, Mr. Speaker. For some time there have been rumors that mail will not be delivered because of a threatened strike by postal workers. With a recently released Gallup poll showing decided disapproval of strikes by public service employees, Congress cannot stand idly by with such action by labor hanging over our heads.

A Harris poll which was also taken during the recess indicates that 3 out of 4 Americans believe that prices are rising faster now than a year ago. When this poll was taken in 1977, less than half of those questioned were of the opinion that the cost of goods and services at the marketplace were higher than in the previous year. With all the talk of pay raises for the American worker, it is interesting to note that better than 2 out of 3 union members would be willing to lower their pay hikes if there were some assurance that government was keeping the spiraling cost of living under control. But inflation simply wipes out any increase in the size of the worker's pay check.

With the results of these polls in mind, and after talking with the residents of my district, I certainly plan to do my best as a Member of the House to make certain that every bill we consider is consistent with a sound fiscal policy. Already, 22 States have passed resolutions calling for a constitutional convention to mandate a balanced Federal budget as a constitutional requirement. As a Wall Street Journal editorial put it so eloquently last Friday, what these States are saying essentially, is that "Congress cannot be trusted with money." I take no sense of pride in this attitude toward the Congress. The only way we can shake this reputation is demonstrate our commitment to a sensible plan for Government spending.

Then too, there is the issue of ethics in Government. I thought our experience with Watergate a few years ago was an example of how not to behave in public office. But the recent disclosures of widespread corruption in the General Services Administration are infuriating the taxpayers in my district, and making many wonder when all of this will stop. I even saw one report just the other day of a worker who managed to get unemployment compensation by using his dog's name. For the Government to be unable to detect these illegal activities in its own house is a crime in itself.

It is no wonder that a Los Angeles Times poll conducted while I was in my district, revealed that at least as many people who voted for proposition 13 last June, are favorably impressed with its results. By the same token, nearly 70 percent of the people feel that their elected officials are not "making an honest effort" to carry out the provisions of the initiative.

So there is much to do as we prepare for adjournment. The mood of the 20th Congressional District in California reflects the impatience of its citizens. I think, Mr. Speaker, their mood is the mood of the Nation.●

SELLING EFT SERVICES, NOT ACRONYMS

Th SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, what do Ginny the Green Machine, the Wizard of Ease, Homefolk's Honey, Goldie your Golden Teller, Girl Friday, and 24-hour Jill have in common?

These names all represent efforts by the banking industry to humanize the rapidly growing system of electronic fund transfers (EFT's)—the so-called "cashless, checkless society of the future."

The realities of this future society have