Electronic Surveillance

FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

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 further 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. 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 further consideration of the bill, H.R. 7308, with Mr. MURTHA (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee rose on Wednesday, September 6, 1978, the Clerk had read through line 25 on page 64.

Are there any further amendments to title I?

AMENDMENT OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUTLER: Page 64, after line 25, add the following new section:

CONSTITUTIONAL POWER OF THE PRESIDENT

SEC. 111. Nothing contained in chapter 119 of Title 18, United States Code, section 605 of the Communications Act of 1934, or this Act shall be deemed to affect the power vested by the Constitution in the President to acquire foreign intelligence information by means of an electronic, mechanical, or other surveillance device.

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

Mr. BUTLER. Mr. Chairman, 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. 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 they 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 courts made it clear that they were in no way addressing the issues involved in foreign intelligence electronic surveillance.

Not only is there 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, but the U.S. Supreme Court has explicitly rejected 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.

Even the most recent espionage case *United States* v. *Humphrey & Troung*, Crim. No. 78-25-A, E. D. Va., May 19, 1978, stated:

> It is not at all certain that a judicial officer, even an extremely well-informed one, would be in a position to evaluate the threat posed by certain actions undertaken on behalf of or in collaboration with a foreign state. . . . The Court is persuaded that an initial warrant requirement (for foreign intelligence electronic surveillance) would frustrate the President's ability to conduct foreign affairs in a manner that best protects the security of our government.

All the Federal judicial circuits which have considered the issue of the inherent constitutional right of the President to authorize warrantless electronic surveillance have held that such power does exist. (Third, fifth, and ninth circuits.)

In accordance with established case law, I believe not only that the President has the power under article II of the Constitution to authorize warrantless electronic surveillance, but that we would be in violation of article II by transferring this executive power to the judiciary under H.R. 7308. I, therefore, urge my colleagues to support the amendment that would continue to recognize the constitutionally inherent power of the Executive to authorize warrantless electronic surveillance in the area of foreign intelligence, a power which has been asserted by every President at least since Franklin D. Roosevelt.

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

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

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding to me. I want to commend the gentleman on offering this amendment.

I am sure that the gentleman would agree that this amendment complies with article II of the Constitution, which vests in the President responsibility and authority with regard to our national security and our foreign affairs. It would be quite improper on our part to endeavor to undercut or deprive the President of his inherent constitutional power in this legislation. Do I accurately understand the gentleman's position on this point?

Mr. BUTLER. The gentleman is correct. That is a fair statement. We cannot do legislative damage to the Constitution. We have questions and problems which should not exist, and therefore I think we ought to make it perfectly clear with regard to the existence of the President's inherent power in this area.

The CHAIRMAN pro tempore. The time of the gentleman from Virginia (Mr. BUTLER) has expired.

(On request of Mr. McCLORY, and by unanimous consent, Mr. BUTLER was allowed to proceed for 1 additional minute.)

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

Mr. BUTLER. I yield further to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, would the gentleman not agree that it would be improper, if not unconstitutional, for the Congress to transfer this authority which constitutionally belongs to the President to the judiciary as far as the decisionmaking is concerned?

Mr. BUTLER. The gentleman is correct. I appreciate his contribution.

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, the immediate result of passage of this amendment would be to make the Congress look foolish and to announce to the country that we have wasted 3 years on this legislation.

The amendment negates the rest of the bill's provisions. It eliminates the standards the other provisions set up to authorize and control electronic surveillance and returns us, once again, to the thrilling days of the pre-Watergate era. Even the McClory substitute affects the so-called inherent power of the President by legislating how foreign intelligence information is collected.

The amendment says to the President—any President—"here's a statute that we have considered carefully for 3 years. It's the first piece of legislation intended to deal with the problems facing our intelligence operations. We hope you like it. If you don't, no sweat, just ignore it."

Make no mistake about it—that is precisely what the amendment says.

This amendment can be read two ways. Either the President has no inherent power to collect foreign intelligence information, or this bill and all its provisions are abrogated entirely.

Presuming the approach of the amendment to be the latter, it eliminates all standards of any kind in the use of electronic surveillance. It throws us right back into the pre-Watergate era.

Voting for this amendment is to ignore the need for legislation to settle the law

and collect needed intelligence. It is to ignore the plight of individual intelligence agents.

Even the McClory bill affects the so-called inherent power of the President by legislating how foreign intelligence information is collected.

This amendment is dilatory. "Death by delay," is what the New York Times called this approach.

Again, voting for this amendment is to ignore the need for legislation to settle the law and to collect needed intelligence. It is to ignore the plight of the individual intelligence agents.

I ask my colleagues to reject this amendment.

Mr. McCLORY. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I recognize that there has been a long period of time that has elapsed since the first hearings were conducted by the Subcommittee on the Judiciary with respect to the whole subject of requiring warrants for conducting electronic surveillance in the field of foreign affairs, but I think that the debates on the floor here yesterday and today indicate that there is a great deal more work that needs to be done and there are many, many issues that need to be carefully considered and extensively debated and ultimately resolved by this Chamber and by the other body. And to suggest that the mere fact that there has been a lapse of time since this subject originally began and that therefore it comes here in some sort of perfect form or with an aura of perfection around it is I think to misconceive what the situation is at the present time.

As I understand this amendment, this amendment is in existing law. It is not only in existing law but earlier Congresses have recognized that they could not restrict themselves from writing this into the existing law because it is in the basic law of our Nation, it is in the fundamental law of our country, it is in the Constitution. And if the President has that inherent power we cannot by any legislation in this bill or any other bill deprive the President of that authority. So that it seems to me that if we omit putting this into the legislation, while we establish purportedly "exclusive" requirements with respect to electronic surveillance, we are ignoring our responsibility to adhere to the Constitution.

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

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

Mr. FOWLER. May I ask the distinguished gentleman from Illinois whether or not the gentleman's substitute bill would affect this so-called inherent power of the President by setting standards?

Mr. McCLORY. I would answer that by saying no, it does not. Actually what my substitute bill does in effect is to translate the Executive orders, the Executive authority, into statutory form to confirm in the President the inherent powers which he constitutionally has. So that it really reconfirms what the Constitution says, which I understand and believe it means. So that really the adoption of this amendment is entirely consistent with that concept of what our appropriate role here should be.

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

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

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

Mr. MAZZOLI. Mr. Chairman, I discussed yesterday, with my friend the gentleman from Virginia (Mr. BUTLER) the author of the amendment, this matter. I told him I would think about it very carefully to see if I could find it possible to support it.

The gentleman brings a thoughtful approach to all legislation in our committee, but, however, having thought about it overnight and having read it thoroughly, I am constrained to oppose the gentleman's amendment.

I would like to ask the gentleman this particular question. I think the gentleman's amendment boils down to a value judgment that we must make as to whether or not specifically writing this section into the bill would give a declaration, or would send a signal or would issue notice that Congress suggests that the President has almost plenary power in this area anyway and Congress is just passing a bill for show but, in reality, by adopting this amendment we are maintaining the status quo.

I wonder if the gentleman could advise me: a person who looks at this bill with this language, were it to be adopted, could such a person look at it and say really, Congress is trying to expand the President's power rather than limit it?

Mr. BUTLER. Mr. Chairman, if the gentleman will yield, I appreciate the question very much, because I think the gentleman has put his finger on it. The Constitution of the United States is the preeminent law of the United States and that the Congress must not pass legislation that does not conform with the Constitution.

What we are trying to do here in this legislation—we say the exclusive means by which electronic surveillance is engaged in shall be under this standard. What concerns me is we are saying to the President of the United States: If you want to do what the Constitution tells you to do—and that is that you are the Commander in Chief of the Armed Forces and you have got the responsibility for protecting your country—if you want to exercise your constitutional authority, you do it at your peril.

I think that is a signal this legislation sends, that my amendment would say no, Mr. President, you have got the job, and you have got the responsibility, and if a crisis arises, you do not have to spend all of your time rushing up to the courts or asking the current Attorney General with his current opinion how he feels about it. What you have to do is to recognize that you have this responsibility and the Congress of the United States recognizes you have it.

What about war? If we had a war under this bill the President has to go through all this process.

Mr. MAZZOLI. Mr. Chairman, if I may reclaim my time. I certainly think the gentleman's observations are illustrative of his concerns. The gentleman, by his amendment, does not seek simply to restate the obvious. That is, Congress is not taking any powers from the President and his residual powers remain in his hands.

What the gentleman is basically trying to say, is that powers to surveill would be conferred upon the Chief Executive himself and he can take certain actions in connection with what he determines to be essential needs of foreign intelligence.

Is that a fairly correct analysis of the gentleman's feelings on this matter?

Mr. BUTLER. The gentleman's statement is somewhat correct; but, of course, we have an expression from the Congress here as to the areas in which we want the President to be cautious. Of course, we have had some experience with that area. We have "impeached" a few people who have trespassed on constitutional rights, so we have systematically, over the years—which is the American system—defined just how far the President can go.

However, all of a sudden, we come along with a bill and say that the Constitution does not really mean anything because we are saying that we have a higher authority. That is not right. I do not want our President, who is charged with the responsibility of protecting our country, to have to worry about just exactly what the law says as opposed to what the Judiciary says. That is not what the Constitution wants him to do.

Mr. MAZZOLI. As always, the gentleman from Virginia makes an important point. I share his concern about what happens in the event of an emergency which can, on its own terms, be clearly determined to any thoughtful and any alert person as an emergency.

My problem is, if I read the gentleman's language correctly, that he suggests that certain powers are vested by the Constitution in the President, yet the courts have not spoken to such an extent and with such particularity on the issue of what constitutes an emergency to which the President must respond. Therefore, I am not really aware of the precise situation at this point. If the gentleman is, I would appreciate his instruction.

The CHAIRMAN pro tempore (Mr. MURTHA). 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 would ask the gentleman whether he can instruct me as to what are the particular powers or what is the defined area of powers which is retained or held by the Chief Executive. The gentleman from Kentucky only knows of the Keith case, in which the court avoided the question and put off for a later time the question of the existence and extent of the inherent power of the Chief Executive in foreign intelligence matters.

Mr. BUTLER. If the gentleman will yield further, Mr. Chairman, that is a very good question.

Of course, I cannot define that with particularity. I might say to the gentleman one of the reasons I might have a little difficulty in responding to the question is that the Committee on the Judiciary was not allowed an opportunity to go into this bill. The subcommittee denied us this privilege; I am not sure they did it wisely. But to the extent that we have not explored all the details of this matter, I do not think that is important at this moment.

What we are saying now is that the Constitution of the United States charges the President with these responsibilities, and he has to exercise them. He is guided somewhat by experience and precedent, so it is not all case law. It is not all the Keith case. Part is the impeachment case. Part of it is previous circumstances; but whatever it is, all this amendment really says is that the President of the United States has the constitutional responsibility. He still has it, and we cannot take it away from him.

Mr. MAZZOLI. I think the gentleman has said it very clearly. That is the reason I am constrained to oppose the gentleman's amendment. Putting this language in H.R. 7308, I think, would at best muddy up the waters as to where the line of demarcation is between Presidential powers retains and Presidential powers limited.

At worst, I think the language would suggest to any reader of the statute that basically what Congress had in mind is this: "Mr. President, you are pretty much on your own. We are saying a few things is H.R. 7308, basically if you want to do something in foreign intelligence, the law is not going to challenge you."

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

(On request of Mr. BUTLER and by unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. BUTLER. Mr. Chairman, will the gentleman yield further?

Mr. MAZZOLI. I am happy to yield to the gentleman from Virginia.

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

On this point with respect to exactly where the line is drawn, we had a very learned colloquy yesterday between the gentleman from Wisconsin (Mr. KASTENMEIER) and the gentleman from California (Mr. EDWARDS). Unfortunately, it was not printed in the RECORD this morning, and I have not had a chance to pull it out. Therefore, I am drawing somewhat on my memory.

However, basically what the gentleman from California (Mr. EDWARDS) asked the gentleman from Wisconsin was that he make it perfectly clear that the President of the United States has no authority, under any circumstance, to authorize electronic surveillance. The gentleman from Wisconsin (Mr. KASTENMEIER) said absolutely yes, and then he cited a section on page 67, one which says that this legislation shall be the exclusive means by which electronic surveillance is carried out.

That does not leave a hazy line, does it, because what that says is that the President has no authority. How can we—and I ask the gentleman this question—arrogate to ourselves the authority to say to the President of the United States, this is the exclusive means we have for you to exercise your constitutional responsibility to see that the laws are enforced, to be Commander in Chief of our Armed Forces, and to protect our country. How can we arrogate that?

The CHAIRMAN. The time of the gentleman has expired.

Mr. KASTENMEIER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment. I regret that the colloquy referred to by the gentleman from Virginia did not appear in the RECORD. I trust that it will appear in the later RECORD, and I do not know the explanation for its failure to be there this morning.

This, I think, is a very dangerous amendment. What it tends to do is invite the President to exercise "constitutional powers" outside of this bill, outside of what we, the Congress, are doing. We might as well not do anything at all if we are to concede to this amendment and to grant affirmatively constitutional rights to the President to conduct this type of operation in this country. That is what the 3 years of work is all about.

Let me go back in time, if I may. I do not at this point yield to the gentleman from Illinois because I do want to make my point. The Committee on the Judiciary perhaps 10 years ago or so had a question of whether or not in title II of the Internal Security Act to terminate the authorization for the detention camps in America. Some people thought of these as concentration camps. Overwhelmingly the Congress decided against further authorization of those camps, and President Nixon signed it into law. But before that happened there was a very interesting circumstance. The Assistant Attorney General, Mr. Mardian, wanted a statutory recognition of a constitutional authority for the President to set up these so-called concentration camps, if needed, and thought that we should have a similar amendment in connection with it. But we, the Congress, decided no, that no person in this country would be detained except pursuant to the laws of the United States. Whether or not the situation would ever arise in which the President might round up Americans and put them in detention camps, nonetheless, he could not draw on the statutes we enacted with reference thereto, and so by analogy we ought not here give the Executive a statutory declaration of constitutional authority to conduct national security wiretaps. If he possesses such a power, he must assert it independent of the statute because we have provided the only authorized, the statutory way of dealing with this question. So it ought to remain, Mr. Chairman, and the gentleman's amendment ought to be rejected.

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

Mr. KASTENMEIER. I yield to the gentleman from Virginia.

Mr. BUTLER. I thank the gentleman for yielding.

We are handicapped on our side of the aisle because we are so young and inexperienced in the Congress. I have not been here for 10 years, but my recollection, having talked to staff, is that the detention camp legislation was an amendment to existing legislation. But the detention camps existed under statutory authority and not under constitutional authority. I pass that on as a second-hand suggestion.

Mr. KASTENMEIER. I appreciate that, and I would only comment that the question, nonetheless, arose: Does the President have constitutional authority, and should we state a statutory disclaimer in recognition of such authority? We declined to do so, and we ought not, indeed, assert such authority here for the President with regard to these wiretaps.

Mr. McCLORY. Mr. Chairman, will the gentleman yield to me for an observation?

Mr. KASTENMEIER. I yield to the gentleman.

Mr. McCLORY. I thank the gentleman for yielding.

The gentleman suggests that this legislation would provide that the President may not conduct foreign intelligence electronic surveillance. That is a misconception of what this bill is intended to do, as I understand it.

I think that we do not have the right or authority to deprive the Executive of the power to conduct electronic surveillance. Now, what we are doing here is saying that he conducts it, but he has to have another branch, the judicial branch, to pass on this. We are attempting to pass the Executive authority to the judiciary.

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

(By unanimous consent, Mr. KASTENMEIER was allowed to proceed for 1 additional minute.)

Mr. KASTENMEIER. Mr. Chairman, I appreciate the gentleman's comments. We here give the President authority to conduct foreign intelligence surveillance pursuant to this statute. Now, if, in fact, the President has constitutional authority in some other capacity to conduct wire tapping or surveillance on his own, then he must find it and assert it. We have given him the sole statutory authority in this bill to open that sort of thing.

Mr. McCLORY. Mr. Chairman, if the gentleman will yield further, I think what the legislation demonstrates is that we do not have the authority to deprive the President of his constitutional authority.

Mr. KASTENMEIER. May I say to the gentleman we do not affirmatively assert that the President has no constitutional authority. What we have is a situation in which the extant President has said to us gratuitously that he will not, indeed, assert such power beyond the authority within this bill.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to comment on this amendment and briefly on the entire legislation.

I do think it is deplorable, and I am sure there were reasons adequate to those who exercised them, that this bill did not get a full hearing by the Committee on the Judiciary. If we have been dealing with this for 3 years, we could have found 3 weeks or 3 days or 3 hours for the full Committee on the Judiciary, a committee, on which I am proud to serve and which has a distinguished record for being punctilious in protecting civil rights and the human rights and the constitutional rights of everybody concerned; so I think, No. 1, we are making a serious mistake by not letting the Committee on the Judiciary deal with this bill completely.

No. 2, it is, of course, true that we cannot divest the President of any constitutional authority that the Constitution has given him. It is there and there is nothing this body can do to take it away; but, of course, we can put the President in a position of confrontation with this body if we are requiring him to exercise his judgment that, notwithstanding the strictures of this legislation, he is going to act under his inherent constitutional power. That is something we ought to do with great reluctance.

Third, you know, we are a coequal branch of Government, the President, the Congress, and the courts. This Congress in overreacting to the Watergate scandals insists on conferring on the Judiciary more and more authority to make them the supreme authority in this country in terms of running our school districts, running our jails, running our hospitals, and now they are going to run the intelligence services of this country.

Now, I have great respect for each and every Federal judge. I know how they are appointed and how they are confirmed; but I do not think their wisdom, individually or collectively, is superior to the wisdom of the Executive, with the checks and balances that are inherent in his office and in the press and in this body.

I think we are depriving the President of a necessary flexibility to face situations in terms of the national security of this country, and he may need that flexibility on short notice. He may need to act immediately on the best advice available.

We are not defending Richard Nixon. We are defending an institution, and we have so stripped away its powers and its constitutional authorities—we have attempted to anyway—that I think the vital interests of this country are being damaged.

This amendment is certainly innocuous. All it says is that we read the Constitution, too, and nothing we do here is designed or intended to deprive the President of his constitutional authority. I think it is a statement of sanity. I think it is a statement that recognizes that we know the Constitution has given the President some power that we cannot deprive him of.

I trust the President. I trust every President, and I trust the self-cleansing mechanisms of the executive department, the judiciary, and this Congress to see that the abuses, when they occur, will be swiftly discovered and swiftly punished.

But, Mr. Chairman, I just deplore further encroachments on the powers of Congress and the powers of the Executive by the judiciary, and I especially deplore our helping that process along.

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

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

Mr. MURPHY of Illinois. Mr. Chairman, I thank my colleague, the gentleman from Illinois, for yielding, and I will say that I respect his viewpoint very much.

I would like to say, however, that I note the gentleman refers to busing, the medical profession, and other things in which the Federal courts have intervened.

Mr. HYDE. And we could include school districts and jails.

Mr. MURPHY of Illinois. Yes, including school districts and jails. And I share the gentleman's apprehensions about an overactive judiciary. What we are asking in this particular piece of legislation is this: We are asking that a neutral arbitrator, a Federal judge, be appointed as a protection between U.S. citizens and their fourth amendment rights and a government that in the past has violated those fourth amendment rights.

We are not alone in asking this. We have had two Presidents send up this message and the philosophy underlying this bill: President Ford and now President Carter. I can say to the gentleman that I cannot imagine President Ford or President Carter trading away or exchanging their inherent executive rights to defend this country.

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

(On request of Mr. MURPHY of Illinois, and by unanimous consent, Mr. HYDE was allowed to proceed for 3 additional minutes.)

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

Mr. HYDE. Yes, I will yield, but let me just comment first on what has been said thus far.

President Ford was reacting to a deplorable situation in which he found himself following Watergate. As far as President Carter is concerned, I am really at a loss to understand his action except that he campaigned against the White House and against the "imperial Presidency." I am certainly not defending the "imperial Presidency," but I am defending the institution. I think the President has constitutional duties that we ought not to take away from him.

Mr. MURPHY of Illinois. Mr. Chairman, if the gentleman will yield, we are not taking the President's inherent constitutional powers away from him. We are extending the statutory standard or criteria by which we will judge the Executive Department as a coequal branch, to use the gentleman's own words, and it is a standard under which his actions are judged. We are not taking his powers away.

We are dealing with a domestic scene. Within the borders of the United States, when we are dealing with foreign intelligence wiretapping, we are concerned with American citizens' fourth amendment rights.

When the President deals with foreign countries off the shores of the United States, what he does with national security, as it relates to the Marines, the Army, the Navy, and the Air Force, is his business. This is not affected at all.

All we are saying is that "here is a statutory criteria, and when you go to tap or interfere with the fourth amendment rights of American citizens, you must follow these statutory standards."

Mr. HYDE. Mr. Chairman, if I may reclaim my time, I suggest to the gentleman that nothing we do is going to impinge on the President's constitutional authority, but we do put an obstacle in his way and we do restrain his free and flexible exercise of that authority at a very difficult time when he may not know if the person concerned is a citizen.

How does one determine whether a person is a citizen or not if one needs to make a tap immediately, today or tonight?

Mr. MURPHY of Illinois. Mr. Chairman, if the gentleman will yield, the gentleman knows that he can apply for a 24-hour emergency tap without a warrant. The gentleman was here yesterday, and he knows that.

Mr. HYDE. I understand that, but the gentleman assumes that he can get that emergency tap in 24 hours.

Mr. MURPHY of Illinois. That is not a consideration if he is a foreigner, a representative of a foreign government or foreign embassy.

Mr. HYDE. I am simply saying this amendment is a statement of constitutional fact that we ought not to eliminate from the bill.

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

Mr. HYDE. I yield to the gentleman from Kentucky.

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

The gentleman from Illinois (Mr. HYDE), for whom I have high respect, is a member of our Judiciary Committee, and I wish to ask the gentleman this question:

If it is the gentleman's feeling that there is no way the Congress can impinge or limit or circumscribe the President's constitutional power, then I wonder why we should insert this language at all if we are simply stating again what the gentleman feels is already the essence of the bill.

Mr. HYDE. Mr. Chairman, my answer to that question is that we put ourselves in a position of confrontation with the President, because without this in the law, the President may feel that he is breaking the law that we have passed, even though that part of it is constitutional. I just say that we ought to at least state that we know he is the President and he has some inherent authority.

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

(On request of Mr. BUTLER, and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

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

Mr. HYDE. I yield to the gentleman from Virginia.

Mr. BUTLER. Mr. Chairman, I thank the gentleman for yielding, and I appreciate his contribution very much.

The gentleman is, of course, entirely correct in saying that what we are doing by this legislation, without the amendment I offered is, telling the President of the United States, "You assert your constitutional prerogatives and responsibilities at your peril." And that is wrong.

The real language of this legislation puts it in this context; that is, shall be the exclusive means, and "exclusive" is the key word in this legislation.

I do not think there can be any doubt in the gentleman's mind about what the people who wrote this bill had in mind, and I do not think there could be any doubt in the gentleman's mind, after the colloquy we had yesterday between the gentleman from Wisconsin (Mr. KASTENMEIER) and others, about what the people who wrote the bill and the intelligence community had in mind. What is meant here is that the President of the United States has no constitutional authority, and if he does have any, by God, he has to prove it. That is a heck of a position to put the President of the United States in.

If the gentleman will yield further, I am very much distressed that the impression is being left that this requirement of exclusive legislative authority was in President Ford's bill. There was no such thing at all. President Ford's bill expressly included language substantially in the language which I offer here today, which was a recognition of the President's inherent constitutional authority.

I quote from the Ford bill:

> Nothing contained in this chapter shall limit the constitutional power of the President to order electronic surveillance for the reasons stated in section 2511(3) . . .

I insist that what we are doing here is what was done in the Ford bill, and it is very clearly indicated in these circumstances.

Mr. HYDE. Mr. Chairman, I just do not know what that hearing is going to consist of when you go before the judge and say, "I have a feeling in this case, and will Your Honor give us a warrant." It is a charade and it is designed to sanctify something that is essentially meaningless.

Mr. ASHBROOK. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I have listened to this debate, and go back to what we said yesterday. We continually hear the assertion—and it is an incorrect assertion, I believe—that we are really not trying to go very far and we are really not trying to impinge on the power of the President in this legislation.

The truth of the matter is that what we are trying to do is to change the position of Congress expressed in the 1968 omnibus crime legislation.

Mr. Chairman, we clearly said in the 1968 legislation, in section 2511(3), that we were not going to impinge on the President's inherent power. Now we are trying to go exactly the opposite and saying the President does not have inherent power, he only has what we give him.

The people who drafted the legislation, those who appeared before the committee, those who testified, knew what they were doing.

Let us take what Common Cause said in their letter of August 7 to all of us. It said that H.R. 7308 eliminated once and for all the doctrine that the executive branch has inherent power to conduct national security wiretaps.

That is what the ACLU believes. That is what Common Cause believes. That is what people who will be going into court and litigating believe.

I do not think we should, as we have on page 67, indicate that the President of the United States does not have the authority that is inherent in the Constitution. That is done by using the word "exclusive."

I believe that he has certain inherent powers. We cannot change them. It is like saying tomorrow is Monday, although it is still Friday. It is like 435 Members of Congress voting and saying tomorrow is Monday, although it is still Friday. The President has the inherent power, regardless of what we say. But we do try to muddy the water here and I think that is why the language of my colleague, the gentleman from Virginia, is absolutely essential. It puts us back in the position we were in in 1968. It puts us back in the same position we were in in the Keith case. The President has what powers he has, and the court will uphold those powers. We should not at this point try to countermand those powers.

So the sponsors are not saying we are going to impinge on the President's inherent powers but they are going to try to cut it a little bit. That is the basis of page 67 of this bill.

It may be that Mr. Carter does not want to exercise his powers. There is little counterintelligence now. We are not talking, necessarily, about 1978, 1979, or 1980. We are talking about future Presidents. If Mr. Carter does not want to engage in wiretapping that he has a right in his constitutional power, that is his business. But why should we say at this point that future Presidents will be limited to the narrow action President Carter now wants to take in the vital field of internal security?

I certainly urge the support and the adoption of the amendment offered by the gentleman from Virginia (Mr. BUTLER), and I applaud him for offering the amendment.

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

Mr. LATTA. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

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

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

Mr. BUTLER. Mr. Chairman, I thank the gentleman from Ohio for yielding.

I just want to clarify one point which the gentleman from Wisconsin, in the course of his references to the proposed legislation, has referred to time after time.

Mr. Chairman, if I could have the attention of the gentleman from Illinois (Mr. MURPHY), perhaps we could solve the problem which my amendment addresses. By inserting on page 67, line 11, the word "statutory," we could make perfectly clear that this legislation is the exclusive statutory means by which electronic surveillance is to be permitted. We will have solved the problem; and my amendment would be unnecessary.

Mr. Chairman, I wonder whether the gentleman from Illinois (Mr. MURPHY), the manager of the bill, would agree to that amendment. If so, we could avoid further discussion of the amendment in question.

Mr. MURPHY of Illinois. If the gentleman will yield, Mr. Chairman, would the gentleman repeat that statement again. I am sorry.

Mr. BUTLER. Yes. The amendment which I would ask the gentleman to consider would obviate the problem to which my amendment is addressed would be on page 67, line 11. At that point I would suggest inserting after the third word, and before the word, "means," one word, "exclusive." At that point I would insert the word "statutory" so that the legislation shall read the "exclusive statutory means."

Mr. MURPHY of Illinois. Mr. Chairman, if the gentleman will withdraw his amendment, we will accept that word "statutory" at that point in the bill.

Mr. BUTLER. Mr. Chairman, I thank the gentleman from Illinois (Mr. MURPHY).

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The CHAIRMAN pro tempore. The amendment offered by the gentleman from Virginia (Mr. BUTLER) is withdrawn.

Does the gentleman propose another amendment?

Mr. BUTLER. Yes, Mr. Chairman. If I may, I ask unanimous consent that I may offer an amendment not in writing and not published in the RECORD, which would insert the word "statutory" on page 67, line 11.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

Mr. MURPHY of Illinois. Reserving the right to object, Mr. Chairman, I would like to hear the amendment first.

Mr. BUTLER. All right.

AMENDMENT OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUTLER: On page 67, line 11, after the word "exclusive" insert the word "statutory".

Mr. MURPHY of Illinois. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. MURPHY of Illinois. Mr. Chairman, we will accept the amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Virginia (Mr. BUTLER).

The amendment was agreed to.

PARLIAMENTARY INQUIRY

Mr. BUTLER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state his parliamentary inquiry.

Mr. BUTLER. Mr. Chairman, is my amendment now accepted in the bill?

The CHAIRMAN pro tempore. The Chair will state that the gentleman's amendment is accepted.

Mr. BUTLER. As part of the bill, Mr. Chairman?

The CHAIRMAN pro tempore. As part of the bill.

Mr. BUTLER. I thank the Chair.

AMENDMENT OFFERED BY MR. LATTA

Mr. LATTA. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. Is the gentleman offering an amendment which appears in the RECORD?

Mr. LATTA. That is correct, Mr. Chairman.

The CHAIRMAN pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. LATTA: Page 40, after line 4, insert the following new subparagraph and redesignate subparagraphs (2) and (3) accordingly:

(2) 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 up to one year—

(A) during a period of war declared by the Congress; or

(B) during a period of national emergency, declared by the President in accordance with the National Emergencies Act, with specific reference to this Act, and upon the transmittal to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate of a statement by the President setting forth the facts and circumstances giving rise to the need for such declaration.

Mr. LATTA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. LATTA. Mr. Chairman, I ask unanimous consent to substitute a modified amendment by reason of the fact that the McClory amendment has changed the page number into which this amendment would fit, and we have had to redraft the amendment to provide for a new section.

Mr. Chairman, this matter has been discussed with both sides, both managers of the bill.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN pro tempore. The Clerk will report the amendment, as modified.

The Clerk read as follows:

On page 64, after line 25, add the following new section:

"AUTHORIZATION DURING TIME OF WAR

"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 up to one year during a period of war declared by the Congress".

Mr. LATTA. Mr. Chairman, I believe my amendment is needed to correct an oversight or an omission in this bill. At the time this matter came before the Committee on Rules, I raised the question of the need for the President to act in times of war without being required to take the time to secure a court order. There certainly would be no desire on the part of the proponents of this legislation to tie the hands of the President during such a period and to possibly put the security of the country in jeopardy. During such a period we ought to give the President of the United States all the discretion he needs to protect the best interests of the country. Therefore, I have proposed this amendment to give him that needed authority. I have discussed this amendment with the managers on both sides of the aisle and I believe they will accept it as a necessary amendment to the bill.

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

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

Mr. MURPHY of Illinois. I thank the gentleman for yielding.

The gentleman from Ohio brought this to our attention when the committee appeared before the Committee on Rules. I think it is a pertinent amendment, and this side of the aisle will accept it.

The CHAIRMAN pro tempore. The question is on the amendment, as modified, offered by the gentleman from Ohio (Mr. LATTA).

The amendment, as modified, was agreed to.

AMENDMENT OFFERED BY MR. ERTEL

Mr. ERTEL. Mr. Chairman, I offer an amendment that has been published in the RECORD.

The Clerk read as follows:

Amendment offered by Mr. ERTEL: Page 63, line 2, insert "(a)" after "Sec. 108.".

Page 63, after line 9, insert the following new subsection:

(b) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate shall periodically review the information provided under subsection (a). If either such committee determines that an electronic surveillance of a United States person under this title has produced no foreign intelligence information and that the disclosure of the fact of such surveillance to such United States person would not harm the national security, such committee shall inform such person of the fact of such surveillance and that no foreign intelligence information was derived from such surveillance.

Mr. ERTEL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

Ms. HOLTZMAN. Reserving the right to object, Mr. Chairman, will the gentleman from Pennsylvania explain the amendment?

Mr. ERTEL. Yes, I will, Mr. Chairman.

Ms. HOLTZMAN. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. 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, prior to discussing the amendment, I ask unanimous consent that one word in the amendment as printed in the RECORD be changed, that is, that the word in the third line of section (b) be changed from "shall" to "may."

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN pro tempore. The Clerk will report the modification.

The Clerk read as follows:

In the third sentence of section (b) of the Ertel amendment following the word "Senate" strike the word "shall" and insert in lieu thereof the word "may".

Mr. ERTEL. Mr. Chairman, this amendment is basically an amendment for oversight by the Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate. It provides that in the event there has been electronic surveillance, whether it be by a wiretap or any other type of electronic surveillance, if the committee of the House or the Senate determines, one, that no foreign intelligence information has been obtained and, two, that there is no threat to the national security, then that committee should inform the target of that investigation that he has been under surveillance. It advises the person what has been done in regard to his particular activities by the intelligence community.

I point out that this is an oversight amendment. It gives the Select Committees on Intelligence a right. They do not have to, but they may disclose to the individual, but only after they make an affirmative determination there is no threat to the national security or, second, that no foreign intelligence information was obtained. The reason for the amendment is to hold over the intelligence agencies the threat that their activities if they are improperly done will be disclosed. There are criminal sanctions within this bill which are to be

used against intelligence agencies if they act in bad faith, but there is no way to know if they act in bad faith unless there is a disclosure.

We cannot provide a disclosure unless we know that there is no threat to the national security, and further, that there is no national security information obtained; so really what it is, is an oversight amendment to make sure that the agencies act properly.

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

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

Mr. MURPHY of Illinois. Mr. Chairman, I appreciate the gentleman bringing this to the committee's attention. I have talked with the gentleman, as have other members of our committee and the chief counsel, and with the change from "shall" on the third line to the word "may", this side will accept the amendment.

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

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

Mr. McCLORY. Mr. Chairman, I do not know that I have any objection to the amendment; but I would just like to ask this question. How do you determine whether or not information has been obtained; who would make that determination?

Mr. ERTEL. The Select Committee on Intelligence; either of the House or of the Senate, they would make that determination under their oversight. Under the bill it is required that the Select Committee have oversight on a semiannual basis.

Mr. McCLORY. Mr. Chairman, we have no objection to the amendment.

The CHAIRMAN pro tempore. The question is on the amendment, as modified, offered by the gentleman from Pennsylvania (Mr. ERTEL).

The amendment, as modified, was agreed to.

AMENDMENTS OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Chairman, I offer two conforming amendments.

The Clerk read as follows:

Amendments offered by Mr. McCLORY: Page 50, strike out line 22 and all that follows down through line 6 on page 51, and redesignate subsections (d) through (g) accordingly.

Page 51, line 9, strike out ", except that" and all that follows down through line 13 and insert in lieu thereof: ".".

Page 51, line 17, strike out ", except that an" and all that follows down through line 23 and insert in lieu thereof: ".".

In section 102(a) (as amended by the amendment offered by Mr. McCLORY), strike out "the Special Court" and insert in lieu thereof "a court".

In section 105(e) (as amended by the amendment offered by Mr. McCLORY), strike out "designated pursuant to" and insert in lieu thereof "having jurisdiction under".

Mr. McCLORY (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. MURPHY of Illinois. Mr. Chairman, reserving the right to object, I wish the gentleman would explain the amendments.

Mr. McCLORY. Mr. Chairman, these are amendments which have been discussed by counsel on both sides.

Mr. MURPHY of Illinois. Mr. Chairman, reserving the right to object, I would insist on the amendments being read. Therefore, I object.

The CHAIRMAN pro tempore. Objection is heard.

The Clerk will read.

(The Clerk concluded the reading of the amendments.)

Mr. McCLORY. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. MURPHY of Illinois. Mr. Chairman, reserving the right to object, now that the amendments have been read, we have no objection on this side.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN pro tempore. The question is on the amendments offered by the gentleman from Illinois (Mr. McCLORY).

The amendments were 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 45, line 9, strike out "or" and insert in lieu thereof "and".

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

Mr. McCLORY. Mr. Chairman, this amendment really does nothing more than to add to the accountability of the Executive with regard to exercise of foreign intelligence electronic surveillance. In the foreign intelligence requirements in H.R. 7308 there is provision that the court application shall include a detailed certification.

It states that the certification should contain statements that the information sought was from intelligence information-gathering agencies, including a justification for the statement, and that the information cannot reasonably be obtained by normal investigative techniques. It states also that the certification should be approved by a senior executive branch official or the Assistant to the President for National Security Affairs.

What this amendment does is to require that the Assistant to the President for National Security Affairs and a senior executive official who is confirmed by the Senate shall make this certification. It merely assures that we can call before our body for purposes of oversight somebody also will be involved in this certification procedure. It affords us a better chance at oversight. It imposes a greater responsibility and puts greater restrictions on the Executive.

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

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

Mr. MURPHY of Illinois. Mr. Chairman, I have talked to the gentleman from Illinois (Mr. McCLORY) with regard to this amendment, and we are willing to accept it on this side.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. McCLORY).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Chairman, I offer an amendment that is referred to as "amendment number 11."

The Clerk read as follows:

Amendment offered by Mr. McCLORY: Page 63, line 2, strike out "semiannual" and insert in lieu thereof "quarterly".

Mr. McCLORY. Mr. Chairman, all this amendment does is require that the Attorney General shall report quarterly not semiannually to the House and Senate Intelligence Committees. It seems to me, particularly since we are going to be reporting with regard to electronic surveillance on U.S. persons, that we should have that kind of reporting.

The Attorney General, as I recall, said that this would not be too great a hardship on his part to provide for this quarterly report. It would give us increased oversight and enable the Congress to protect further the rights of persons who are subjected to electronic surveillance.

Mr. Chairman, it seems to me that this amendment is likewise a very desirable amendment, and I urge its adoption.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the committee spent considerable time and thought in deliberations over the congressional oversight provisions. We considered requiring quarterly reporting. The administration opposed it and gave convincing arguments against it.

It was decided that the advantages of more frequent reporting were outweighed by the administrative burdens and security risks involved in the proliferation of the paperwork that would ensue. It was also felt that the content of the report would be more thorough and substantive if it were developed over a 6-month period.

This is the view of the Director of the FBI, the Attorney General, and the heads of the NSA and the CIA.

On those grounds, Mr. Chairman, I reluctantly oppose the gentleman's amendment.

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

Mr. MURPHY of Illinois. I am happy to yield to the chairman of the committee.

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

Mr. Chairman, as the distinguished chairman of the subcommittee indicated,

the administration opposes this particular amendment because it does impose an administrative burden upon the administration.

But beyond that, it is going to impose an administrative burden upon this committee, and we have sufficient burdens right now. We have a difficult enough time now reading the voluminous reports that come to us and getting all the briefings from the intelligence agencies. I hope we are not impacted with yet another report.

The 6-month report is clearly sufficient to do the job that ought to be done by the administration and by the committee.

Mr. Chairman, I would hope that this particular nitpicking amendment would be rejected by the committee.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. McCLORY).

The amendment was rejected.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment, entitled "amendment number 10," which appeared in the RECORD on August 2, 1978.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 63, strike out lines 11 through 18 and insert in lieu thereof the following:

SEC. 109. (a) OFFENSE.—A person is guilty of an offense if he intentionally engaged in electronic surveillance under color of law except as authorized by statute.

Page 63, line 19, strike out "(1)".

Page 63, line 20, strike out "(1)".

Page 63, strike out line 25 and all that follows down through line 4 on page 64.

Mr. ASHBROOK (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. ASHBROOK. Mr. Chairman, this amendment was requested by the Justice Department in a letter to Chairman BOLAND of the House Permanent Select Committee on Intelligence dated April 17, 1978, and signed by John M. Harmon, Assistant Attorney General, Office of Legal Counsel. I have worked with my colleague, the gentleman from Arizona, Mr. RUDD, in developing this amendment.

The statement of the Justice Department on this section is:

The Administration objects to this section, which was added by Subcommittee amendment. The penalty section in the Senate version of this bill makes it a crime to willfully engage in an unauthorized surveillance or to willfully disclose information derived from an unauthorized surveillance. That is acceptable. This section in H.R. 7308, however, would cover unauthorized surveillances and a violation of any other provision of the chapter. Thus, it would be criminal to violate the minimization requirements of this bill.

As the Committee is aware, this is a very complicated legislation and the minimization procedures required by the bill will often be long and involved. We do not believe it is necessary to ensure that the bill's provisions are properly implemented to impose possible criminal violations on all of those employees who will have to deal with such minimization procedures on a daily basis. There are no comparable provisions in connection with Title III. We see no need to treat individual employees in the intelligence community substantially different than their colleagues involved primarily in law enforcement.

In this matter I find myself in agreement with the administration.

Under this section, if an FBI agent intentionally kept one piece of information he was supposed to destroy, or intentionally disseminated one conversation within the FBI to a person who was not supposed to receive it, he could be sent to jail. If an FBI agent intentionally violates the minimization procedures, he should be subject perhaps to disciplinary measures within the Bureau, but it is not a violation sufficient to justify criminal prosecution. Even more important, where he does not intentionally violate the procedures, but in the press of business makes a human mistake, he may fear that a prosecutor is going to be breathing down his neck, expecting the agent to prove that it was not intentional. Such a threat will impede the intelligence collection of this country and runs counter to one of the avowed purposes of the bill—to protect these agents and give them confidence that they will not be prosecuted for acting under the bill.

In addition, if this provision is not deleted, the ACLU will be encouraged to undertake additional civil suits to harass the FBI agents.

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

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

Mr. MURPHY of Illinois. I thank the gentleman for yielding.

Mr. Chairman, the gentleman from Ohio (Mr. ASHBROOK) and I have discussed this. The chief counsel and other members of the committee have reviewed it, and we will accept the amendment.

Mr. ASHBROOK. I thank my colleague.

Mr. RUDD. Madam Chairman, I move to strike the requisite number of words.

I would like to engage the distinguished gentleman from Illinois in a colloquy, if I may, and perhaps the gentleman from Ohio in a colloquy concerning the Ashbrook amendment which was passed. I have a couple questions that I would like to ask.

In the debate yesterday, I expressed concern about what might happen in the case of a subordinate, a loyal subordinate, the agent on the street, and I am wondering if this amendment will actually protect the person against prosecution while acting under legal guidelines and under authority of the President and the Attorney General in conducting surveillances prior to the time a warrant might be issued. Is that spelled out in this amendment?

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

Mr. RUDD. I will yield to anyone who can answer the question.

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

Mr. McCLORY. Madam Chairman, the subject of protection of FBI agents and law enforcement personnel is addressed by the Federal Torts Claims Act amendments pending before the Committee on the Judiciary. That bill would be comprehensive with regard to all Federal agents and would substitute the United States as the party defendant in suits alleging that Federal agents have acted unlawfully.

This legislation would absolve Federal agents of defending against challenges to their activities performed under color of law and would guarantee to plaintiffs that their successful grievances will be fully remedied. This legislation is a matter of high priority with the administration and will, I believe, be considered in the Judiciary Committee next week.

Mr. RUDD. Madam Chairman, I thank the gentleman.

I yield to the gentleman from Ohio.

Mr. ASHBROOK. Madam Chairman, I thank the gentleman for yielding.

As I pointed out in my statement, the reason that John Harmon, Assistant Attorney General of Counsel, addressed a letter to Chairman BOLAND stating, in effect, the administration's opposition to a provision that was in the House bill, but not in the Senate bill, was for the precise purpose that my amendment was offered. As Mr. Harmon said, there was no comparable provision in title III of the Senate bill and he went on to say, and I think this will answer the question:

We see no need to treat individual employees of the intelligence community substantially different than their colleagues involved in law enforcement.

The thrust of my amendment, which was agreed to by both the majority and the minority side, was to delete the House provision, which in the case of minimization procedures would possibly make an FBI agent or a CIA agent guilty or subject to criminal prosecution for violation of a regulation.

Madam Chairman, we all agree that they should be guilty and found guilty if they willfully violate the law. I do not think there is any question about that. I do not think the FBI agents or the CIA agents disagree with that.

But what Mr. Harmon is saying and what my amendment attempted to clarify is that in those situations where we have good faith performances and cumbersome minimization procedures, the agent in the field should not be held criminally liable or stand a chance of facing criminal prosecution if by chance or in some way there is a name he forgot to turn in from his file or he did not comply with some procedures that was laid out in minimization.

My amendment precisely addressed itself to that problem. It did not relieve him of criminal liability in cases where he violated the law. It simply said that as far as minimization procedures and good faith performances are concerned, he has the same rights that other law enforcement officers have, and that counterintelligence officers and intelligence community officers should also have those rights. That is the only thrust of my amendment.

Mr. RUDD. Madam Chairman, I am sure the agent himself or anyone else would want to bo so assured. If he is acting in good faith, he is protected, and I assume this piece of legislation also

does the same thing civilly. That would derive also from the criminal action, is that correct?

Mr. ASHBROOK. Yes. If the gentleman will yield further, if an FBI agent intentionally violates the law, I think all of us agree, of course, that he can be subject to criminal prosecution. But where he might make some human error or unintentionally violate guidelines or procedures that would be handed down—and many times, as we all know, they are nebulous, particularly as they concern the man out in the field—he would not be subject to prosecution.

The CHAIRMAN pro tempore. The time of the gentleman from Arizona (Mr. RUDD) has expired.

(By unanimous consent, Mr. RUDD was allowed to proceed for 2 additional minutes.)

Mr. ASHBROOK. Madam Chairman, if the gentleman will yield further, my point was that the agent could and probably should be subject to discipline within the agency, within the FBI or CIA, for violation of minimization procedures, but he should not have the fear that some prosecutor or some court might be looking over his shoulder and saying, "You are guilty or you may be guilty of a criminal violation, and we are going to prosecute you."

Mr. RUDD. Madam Chairman, I wanted to be assured, of course, that an agent acting in good faith is properly protected, and after all, we want to guarantee to our intelligence agents they may operate without fear of reprisal for doing the job they may be ordered to do in a competent manner.

Mr. ASHBROOK. I do not completely agree with all the provisions of the bill, but the bill does not change the common law provisions, of course, and it protects the agents who are acting in good faith.

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

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

Mr. MURPHY of Illinois. Madam Chairman, I agree with the remarks of the gentleman from Ohio (Mr. ASHBROOK). We have entered into a colloquy about this matter on a number of occasions.

There is a good faith defense in common law.

When an FBI agent does his job pursuant to a warrant or a court order and he goes out and he does it in good faith, he has a good faith common law defense. The only time I think they could bring a criminal action is for a conscious, open disregard of the law. The standard would be almost beyond a reasonable doubt. This is the problem we addressed.

I appreciate the gentleman's bringing this point to our attention.

The testimony before our subcommittee and the full committee by the head of the FBI, Mr. Webster, and the Attorney General was that we are having a hard time getting agents to execute orders today for conducting surveillance of foreign spies in this country, and there is a wealth of intelligence material that is undetected. That was not the fact in the past, because in the old days under Director Hoover orders were given to conduct surveillance, and the job was done.

The CHAIRMAN pro tempore. The time of the gentleman from Arizona (Mr. RUDD) has again expired.

(By unanimous consent, Mr. RUDD was allowed to proceed for 2 additional minutes.)

Mr. MURPHY of Illinois. Madam Chairman, if the gentleman will yield further, under Director Hoover, the agents were sent out into the field to conduct surveillance, and there was no memorandum or there were no written orders given. Mr. Hoover is now dead, and these agents stand naked in the "hall of justice" trying to defend themselves against criminal charges brought against them for their behavior.

What this bill does is to try to protect those agents, and I think it does it well.

Madam Chairman, I thank the gentleman for yielding.

Mr. RUDD. Madam Chairman, I thank the gentleman from Illinois (Mr. MURPHY) for clarifying this issue, and I am sure this legislation does protect the employees.

I hope the mention of Mr. Hoover's name will not be taken as disparaging or that anyone thinks we are disparaging in any way the name of this great American. Mr. Hoover was a great American, and he did a fine job for our country.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The amendment was agreed to

AMENDMENT OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUTLER: Page 31, line 11, strike out "and controlled".

Mr. BUTLER. Mr. Chairman, section 101(a) provides 6 definitions of the term "foreign power".

The sixth definition defines "foreign power" as an entity that is directed and controlled by a foreign government or governments.

This amendment would simply strike the words "and controlled," so that it would be sufficient if an entity is directed by a foreign government rather than directed and controlled. If an entity is directed by a foreign government, this should be more than adequate to allow our intelligence agents to target such entity for electronic surveillance to gather foreign intelligence information.

To burden the Government with the additional requirement that a showing also be made to the court that the entity is also controlled by a foreign government is entirely inappropriate, and the amendment would strike the words "and controlled".

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

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

Mr. FOWLER. I thank the gentleman for yielding, and I have just one question of clarification that I would like to ask of the gentleman from Virginia.

How would this affect a foreign airline? Would the gentleman have an opinion as to whether or not a government airline would be directed and controlled, or simply directed and not controlled?

Mr. BUTLER. I would assume, under those circumstances, that an airline is both directed and controlled.

Mr. FOWLER. If it were a government-owned airline?

Mr. BUTLER. Right.

Mr. FOWLER. I thank the gentleman.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, any domestic group which would receive some direction from a foreign government could be targeted under this amendment. A law firm or public relations firm representing a foreign government falls into this category. Former CIA Director William Colby's firm is one such law firm. The majority of the American banking institutions and Madison Avenue firms also would be covered. They all receive some direction from foreign governments. I might say to my colleagues that the subcommittee, under the able leadership of the gentleman from North Carolina (Mr. ROSE), is considering starting hearings on terrorist groups, and this committee will in the future deal with domestic terrorist groups that I think the gentleman from Virginia is directing his amendment at. I might say that we recently in Chicago had a terrorist group take over the embassy or the German legation in Chicago,. The gentleman from North Carolina (Mr. ROSE) is bringing down those officials who were involved in the peaceful settlement of those terrorists occupying the German legation office, and we are presently taking testimony on this. I would ask the gentleman to defer this amendment so that when this committee comes out with legislation—and I can assure the gentleman that as chairman of the subcommittee I will be working closely with the gentleman from North Carolina (Mr. ROSE)—in the not-too-distant future we will begin to discuss thoroughly this question. I feel it would be better not to deal with it today under this amendment.

Mr. BUTLER. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

AMENDMENT OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUTLER: Page 31, beginning on line 20, strike out "contrary to" and all that follows through page 22, line 3, and insert in lieu thereof "; or".

Mr. BUTLER. Mr. Chairman, this amendment would broaden the definition of "agent of a foreign power" as it applies to non-U.S. persons by deleting from the foreign visitor provision the requirement that the circumstances of the visitor's presence in the United States would indicate that he was likely to engage in espionage. It would also delete the requirement that any espionage conducted by the visitor's country of origin by

"contrary to the interests of the United States" before the visitor could fall under the definition of "agent of a foreign power."

The requirement that the circumstances of the visitor's presence in the United States indicate that he is likely to engage in espionage creates inflexibility and denies positive intelligence-gathering opportunities. The principal responsibility of our intelligence services is to learn and understand the political, strategic, economic, and sociological forces of other countries. As former CIA Director William Colby pointed out in testimony before the Subcommittee on Courts, Civil Liberties and the Administration of Justice:

When people with this kind of background come over here, even if they are going to Disneyland, they can have a considerable knowledge to that effect. In their side remarks and their conversations with their colleagues and communications homeward they can be communicating information which, putting those bits of pieces together, can give us a unique view of what is happening in some foreign country. It has nothing to do with protecting us in the narrow sense of that man doing something here, but it has a great deal to do with protecting us by understanding another country's politics.

It is clear that the requirement that the circumstances of the visitor's presence in the United States indicate that he is likely to engage in espionage would undermine this general intelligence gathering activity that has proven so useful to the United States in the past.

The additional requirement that any espionage conducted by the visitor's country of origin be contrary to the interests of the United States is equally restrictive and unnecessary. When a foreign power is conducting intelligence activities in secret in the United States it is highly inconceivable that the purpose of such activities is benevolence toward the United States.

Therefore, I urge my colleagues to support the amendment which would strike these two overly restrictive and unnecessary standards which would greatly undermine foreign intelligence activities conducted by the United States.

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

Mr. BUTLER. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I certainly would agree 100 percent with what my colleague has said. I have brought up some of these precise points in committee before, and this is an area that concerns me very much.

The thing that bothers me the most about this bill, in addition to creating so many cracks that I think intelligence can fall through, is that it is almost a "Catch 22" in some cases. Our intelligence agencies almost have to show full control they can have surveillance in one section we just discussed.

One cannot really do that without first having some investigation. We have many, many examples where it took long, hard investigation with some surveillance to prove the case.

There are too many cases where we almost have to prove the end result before the intelligence agncies can do anything. I think the gentleman adequately makes the point, and I thank him very much.

Mr. BUTLER. I thank the gentleman.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman and my colleagues, most of the arguments made against the gentleman's previous amendment are equally compelling here.

The overriding point that wants to be noted is that the U.S. Government does not, cannot, and should not engage in the kind of indiscriminate electronic surveillance that the amendment would authorize.

The amendment will not contribute one iota toward the achievement of any intelligence goal that the intelligence people have suggested is necessary. The FBI does not seek this amendment. They have asked for nothing more than the current provision contained in H.R. 7308, which was inserted in committee to respond to the Bureau's concerns.

The FBI participated directly in drafting the existing language that the gentleman would amend. The existing language gives the Bureau the full authority it asked for to target specific classes of individuals from specific foreign countries.

The gentleman's amendment would lay hidden like a bomb with a long fuse waiting to be fired. If some future President or FBI wanted to utilize it—and the fact were made known—the political and diplomatic repercussions would be explosive. The amendment would authorize the wiretapping of any foreigner who comes to our shores in a representative capacity.

All that would need to be documented to a judge is that the foreigner comes from a country that engages in intelligence activities in the United States. Presumably, that is about any country with the money to support an intelligence service.

I oppose such wasteful and indiscriminate surveillance, as does the intelligence community, and I oppose the gentleman's amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Virginia (Mr. BUTLER).

The amendment was rejected.

Ms. HOLTZMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I ask for this time solely to clarify some of the language in the bill.

(Ms. HOLTZMAN asked and was given permission to revise and extend her remarks.)

Ms. HOLTZMAN. Mr. Chairman, I would like to direct to the attention of the distinguished chairman of the subcommittee to the language on page 34 which gives the definition of "foreign intelligence information." The definition says that foreign intelligence information means "information with respect to a foreign power or foreign territory that relates to and, if concerning a U.S. person, is necessary to . . . the conduct of the foreign affairs of the United States."

I am concerned by what the term "the conduct of the foreign affairs of the United States" means. We are not talking here about the national defense or security position of the United States. We are talking about something much broader.

I am concerned that this term would authorize surveillance of a U.S. citizen in the United States who might be engaged in a perfectly peaceful activity. For instance, if a group of Americans organizes to protest the arms sale to Turkey, obviously that relates to the foreign affairs of the United States. Or suppose a group organizes to protest arms sale to Saudi Arabia or another nation. Are those groups of Americans now subjected to surveillance?

Foreign affairs is a subject of very grave concern to many Americans who participate in expressing their views in a perfectly peaceful manner, and I am concerned that we may be authorizing surveillance of them when they engage in these activities.

Mr. MURPHY of Illinois. Mr. Chairman, if the gentlewoman will yield, I would say the type of group she describes would not be the type of group that would come under observation. In other words, it is not the type of group the FBI and the National Security Agency or the counterintelligence or the CIA had in mind when we drafted this language.

Ms. HOLTZMAN. They might not have had these groups in mind at that time but I want to be sure that they never have them in mind and are never able to subject them to electronic surveillance, because the gentleman and I both agree that this kind of activity is peaceful and perfectly in accordance with our democratic system. I am concerned about the breadth of this term "foreign affairs of the United States" and what surveillance activities it would trigger.

Mr. MURPHY of Illinois. It was not intended to prohibit a first amendment activity. I do not know whether that would help the gentlewoman or not.

Ms. HOLTZMAN. Would it subject American citizens or U.S. persons—I guess that is the term used in the bill—to surveillance if, in a peaceable manner, they engaged in activities that relate to the conduct of foreign affairs of the United States?

Mr. MURPHY of Illinois. If they were exercising their first amendment rights, U.S. persons would not be the subject of this type of surveillance as the lady envisions.

Ms. HOLTZMAN. I thank the gentleman for his assurance.

Mr. DRINAN. Mr. Chairman, if the gentlewoman will yield, why should we not drop lines 17 and 18? I know that was in the Senate bill, and the Senate bill read at one time the successful conduct of U.S. foreign affairs.

The gentleman from Illinois (Mr. MURPHY) says there is no intention against American citizens who may be protesting, so why do we not just drop lines 17 and 18 seeing the bill relates only to the security of the United States.

Mr. MURPHY of Illinois. I can say to the gentleman from Massachusetts (Mr. DRINAN) that this language was suggested by the administration when they

testified before the committee, as the type of activity they were referring to.

The gentlewoman from New York (Ms. HOLTZMAN) brought up the fact it does not apply to this particular section. The gentleman from Massachusetts (Mr. DRINAN) says why should we not strike that out? The answer is no because there are circumstances under which the counter-intelligence divisions of the FBI and the NSA consider important, and would bring in under that definition.

Mr. DRINAN. But this is relating to the national defense or security of the United States so that that does broaden the vast powers that are vested in the CIA and the FBI, and they simply can state that it is necessary to have surveillance on certain American citizens because the information to be obtained is necessary for the United States to conduct the foreign affairs of the United States, they do not have to say it is necessary to the national defense.

The CHAIRMAN pro tempore. The time of the gentlewoman has again expired.

(On request of Mr. MURPHY of Illinois, and by unanimous consent, Ms. HOLTZMAN was allowed to proceed for 2 additional minutes.)

Mr. MURPHY of Illinois. Mr. Chairman, will the gentlewoman yield further?

Ms. HOLTZMAN. I yield further to the gentleman from Illinois.

Mr. MURPHY of Illinois. I would suggest that the gentleman turn to page 30 and read the definition of "foreign power" and what we mean by foreign power under that definition.

Mr. DRINAN. This section is speaking only, on page 13 and 14, that if this operation, that is a U.S. person, who wishes to demonstrate, so that it is necessary to obtain this surveillance because the information to be obtained is necessary to the conduct of the foreign affairs of the United States, that is far and above, it is much wider than just relating to national defense or security.

Mr. MAZZOLI. Mr. Chairman, if the gentlewoman would yield, in answer to the last question of the gentleman from Massachusetts (Mr. DRINAN) I would refer him to page 32 of our bill, at line 4, which protects the kind of person who would be targeted. I think this is a very important distinction because, in answer to what the gentlewoman also brought up, in order for a U.S. person, that is an American citizen or a resident alien, to be targeted, that person has to fit into the category on page 32. There is a criminal standard that that person has to measure up to. So, taking part in some activity relating to the arms sale to Turkey, or the embargo thereof, is not a criminal violation.

Ms. HOLTZMAN. Mr. Chairman, if I might refine my question a little, would this bill, let us say, allow a wiretap on a foreign power or its agent solely for the purpose of getting information about Americans who are engaging in a perfectly peaceful conduct? For example, would it permit wiretapping an agent of the Greek Government in order to find out whether or not Americans were going to engage in a protest against the arms sale to Turkey? I am very concerned that we in no way permit any such surveillance.

Mr. FOWLER. Mr. Chairman, if the gentlewoman will yield, the answer is an unequivocable no under the committee bill. It may be questionable now that the McClory amendment has been adopted.

The CHAIRMAN pro tempore. The time of the gentlewoman has again expired.

(On request of Mr. MAZZOLI and by unanimous consent, Ms. HOLTZMAN was allowed to proceed for 2 additional minutes.)

Ms. HOLTZMAN. I thank the gentleman for yielding and I yield further to the gentleman from Georgia.

Mr. FOWLER. I appreciate that very much.

Under the committee bill, the answer is no.

Now that we have no warrant to protect U.S. citizens from the very kind of abuse that might occur under the McClory substitute or under the McClory amendment which was adopted last night, we have to be even more vigilant that that does not occur.

However, I asked the gentleman from Kentucky to yield to me so that I could answer the original question which he has just elaborated upon.

First of all, when we have a U.S. person involved, the criminal standard has to apply that that person is either engaging in criminal activity or is likely to engage in criminal activity.

Ms. HOLTZMAN. I understand that would be the case if the U.S. person were the target of the surveillance; but what if the U.S. person is not the nominal target, but is the real target? Would this bill nonetheless authorize the intelligence agencies to obtain a warrant to snoop on foreign powers or persons for the purpose solely or primarily of getting information about Americans and American conduct? That is really my question.

Mr. FOWLER. If I may respond, the gentlewoman from New York undoubtedly knows about the Pike committee and the Church committee, on both of which the gentleman from Illinois (Mr. MURPHY), as subcommittee chairman, served. They have documented those abuses where a foreign agency or a foreign organization was targeted just to collect information on Americans.

Ms. HOLTZMAN. Yes; that is my point.

Mr. FOWLER. Therefore, we wrote into this bill the judicial protection that in an application for a tap, the magistrate should evaluate the reason for that tap in order to afford protection. Unfortunately, the McClory amendment knocked out that provision.

The CHAIRMAN pro tempore. The time of the gentlewoman from New York (Ms. HOLTZMAN) has again expired.

(On request of Mr. MAZZOLI and by unanimous consent, Ms. HOLTZMAN was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Mr. Chairman, will the gentlewoman yield?

Ms. HOLTZMAN. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I thoroughly concur with what my friend, the gentleman from Georgia (Mr. FOWLER), has said.

I think that that protection which our bill, in the original form H.R. 7308, provided did protect the American citizen who is the incidental subject of a targeted search or surveillance, let us say, of the Turkish Embassy or of some foreign power.

Last night on this very floor I suggested that the committee bill did protect against that by requiring minimization procedures to be in effect and approved by the judge before the tap was put on. Further, if the judge, after inquiring into the matter, determined that this was an indirect effort to really target American citizens by going through this facade of targeting some foreign power solely to get this information, the original bill—now it is changed—would have said that there are minimization procedures as to this, and those minimization procedures would be periodically reviewed by the court.

When this committee goes back into the House, I hope we will have a chance to take another look at the McClory amendment. That is why I opposed it last night. While I am sure it is well-intended, I think it has a pernicious effect.

Ms. HOLTZMAN. I thank the gentleman from Kentucky for his assurance.

Let me just ask again under the original bill, not as amended by the gentleman from Illinois if the courts were to find that the objective of the wiretap or of the surveillance was solely or essentially to get information about American people or the conduct of American citizens here in the United States or U.S. persons, even though the matter were related to foreign affairs in some way, that surveillance would not be authorized in the bill?

Mr. MAZZOLI. Absolutely not. The gentlewoman from New York is correct.

Ms. HOLTZMAN. I thank the gentleman for his assurance.

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

Ms. HOLTZMAN. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I would like to point out that with or without the McClory amendment, we have minimization procedures which are prescribed and must be adhered to.

If we had the abuses to which the gentleman from Kentucky (Mr. MAZZOLI) makes reference, then we have abuses which we can take care of both the congressional oversight and by appropriate action against anybody who is abusing the authority.

Mr. MAZZOLI. If the gentlewoman will yield, Mr. Chairman, one of the important distinctions of those minimization procedures to which the gentleman refers would then involve solely an executive function, reviewed by nobody.

Mr. BOB WILSON. Madam Chairman, I move to strike the requisite number of words.

I would like to clarify the colloquy which occurred here with respect to the McClory amendment.

The McClory amendment does not affect U.S. persons as far as the warrant

requirement is concerned. The statement made by the gentleman from Georgia (Mr. FOWLER) is completely inaccurate in that respect.

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

Mr. BOB WILSON. I yield to the gentleman from Georgia.

Mr. FOWLER. Madam Chairman, I would like the gentleman to specify in what way my statement was inaccurate.

Mr. BOB WILSON. The McClory amendment removes the warrant requirement for non-U.S. persons only; is that not correct? And U.S. persons are not only subjected to a warrant requirement in order for them to be surveilled, but also, they are protected through the minimization procedures.

Both the gentleman from Georgia and the other gentleman said that the McClory amendment took this right away from U.S. citizens, and that is completely unfair and wrong.

Mr. FOWLER. Madam Chairman, if the gentleman will yield further, I will be delighted, of course, to let the author of the amendment correct me if I make any inaccurate statements. First, however, I would like to have an opportunity to respond.

First of all, the question which the gentlewoman from New York (Ms. HOLTZMAN) asked was whether or not there was judicial protection for American citizens who are surveilled through a tap which was placed on a foreign entity.

I am sure the gentleman from Illinois (Mr. MCCLORY) will agree that under his amendment there is no judicial protection under that circumstance and that he inserts minimization protection which are, as the gentleman from Kentucky (Mr. MAZZOLI) pointed out, solely under the control of the Executive Branch.

The whole thrust of our legislation was to try to keep this government, or any subsequent government, from tapping a foreign power under the ruse of collecting foreign intelligence information when it is really trying to collect non-intelligence information about Americans. The amendment offered by the gentleman from Illinois would not give judicial protection in that instance.

Mr. McCLORY. If the gentleman will yield, I would like to point out that if there is abuse of the authority which is granted, if there is some ruse employed, the guilty person is going to be subjected to criminal penalties under the McClory amendment or without the McClory amendment. So the question is as to whether or not we are going to require a judicial warrant when we want to target a foreign power or a foreign agent. It could be a foreign spy.

Let me point out that the minimization procedures are minimization procedures which are developed and put in place by the Executive. The judiciary does not have anything to do with either developing or promulgating these minimization procedures, and they should not. I am fearful that with the intervention of the courts they may try to usurp authority that is not granted to them in this legislation. But to suggest that the court is going to review the minimization procedures, then, this it seems to me is an abberation. It is an irrelevant explanation of this legislation. The court is supposed to be there presumably to protect the Attorney General or those who are exercising authority under his direction. They claim that they want this for the Attorney General and for the FBI agents, and so on, who have been sued or who are not going to be sued any more, and it may be that this legislation may discourage some of the suits. But let me say that if the Attorney General or others are abusing their authority, whether they have a court order or they do not have a court order, there is a right to sue and to recover, and the bill provides for it.

Mr. BOB WILSON. Madam Chairman, I yield back the remainder of my time.

AMENDMENT OFFERED BY MR. RAILSBACK

Mr. RAILSBACK. Madam Charman, I ask unanimous consent to offer a clarifying amendment not previously printed in the RECORD, but which I have discussed with both sides and which I believe to be acceptable.

The CHAIRMAN (Mrs. MEYNER). Is there objection to the request of the gentleman from Illinois?

Mr. MURPHY of Illinois. Reserving the right to object, I would just say, Madam Chairman, if we could have the amendment read for the benefit of all of the members of the Committee, it would clarify it.

The CHAIRMAN pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. RAILSBACK: In the amendment offered by Mr. MCCLORY, section 102(b)(4)(A)(1) is amended by adding the words "unobtrusively and" before the words "in such a manner"; and on page 50, lines 8 and 9, add the words "unobtrusively and" before the words "in such a manner".

Mr. MURPHY of Illinois. Madam Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois (Mr. RAILSBACK)?

There was no objection.

Mr. RAILSBACK. Madam Chairman, I offer this amendment to insure that H.R. 7308 will not impose new and onerous burdens of compliance on those telephone companies called upon to assist in the establishment of electronic surveillances.

Currently, I am told, telephone company assistance (pursuant to court order in criminal proceedings, authorizations of the U.S. Attorney General in national security cases) is limited to providing line access information and, when requested, a private line from the source of the tap to the listening post. All physical connections to the intercepted telephone line, however, are made by law enforcement personnel who also provide, connect, and operate listening or recording devices.

Language contained in this measure has been interpreted by some as opening the door to greater demands for telephone company involvement such as: the furnishing of monitoring equipment, the use of telephone company employee identification cards to gain access to customer premises, or even the use of telephone company personnel for access and listening device placement in customer premises. Such a direct role in electronic surveillance by the telephone companies would, in my opinion, be inappropriate. It would seriously conflict with the responsibility of these companies to safeguard the privacy of their customers.

The amendment which I am proposing is quite simple. It would merely replace the uncertain language contained in H.R. 7308 with the judicially tested and defined language found in the Federal Omnibus Crime Control Act. Found at 18 U.S.C. section 2518(4) this language provides that telephone companies will provide the technical assistance necessary to accomplish the interception "unobtrusively". This language is preferable over that found in the legislation currently under consideration because it has proven workable over a number of years, it is compatible with the responsibility owed by telephone companies to their customers, and its meaning has been clearly refined by judicial interpretation.

I urge my colleagues on both sides of the aisle to support this simple amendment.

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

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

Mr. McCLORY. I thank the gentleman for yielding.

I am familiar with the gentleman's amendment, and I see no objection to the amendment.

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

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

Mr. MURPHY of Illinois. I thank the gentleman for yielding.

I would say to my colleague, the gentleman from Illinois, that we have discussed this amendment. The amendment that he offers makes it clear that the statute does not authorize the Government to request cooperation from a common carrier that is not authorized under title III of the Omnibus Crime Control Act of 1968. I made this point yesterday in colloquy with the gentleman from Wisconsin (Mr. KASTENMEIER) and the gentleman from Ohio (Mr. ASHBROOK) on the floor. We are not requiring anything other than what is required now under title III of the act I just mentioned.

Mr. RAILSBACK. I want to thank the gentleman very much.

Mr. MURPHY of Illinois. I will support the amendment, and I appreciate the gentleman's bringing it to our attention.

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

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. RAILSBACK).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. KEMP

Mr. KEMP. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. KEMP: Page 62, after line 15, insert the following new subsection:

(l)(1) Notwithstanding any other provision of this title, whenever the President

has reason to believe that, based upon information obtained through an electronic surveillance under this title or otherwise, an individual who has diplomatic immunity conferred by the United States is, within the United States, intercepting by electronic means the communications of individuals in the United States and that such intercepting of communications is being conducted on behalf of a foreign power and in violation of the laws of the United States, the President shall—

(A) so inform the chairman and ranking minority member, or, in his discretion, the members, of the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate;

(B) except as provided under paragraph (2), so inform any individual believed to be a particular target of such intercepting of communications in order that such individual may take such precautions as such individual considers advisable; and

(C) except as provided under paragraph (2), so inform the Ambassador or Charge d'Affairs or other principal representative of such foreign power to the United States and demand that such intercepting of communications be ceased immediately.

(2) The President shall not be required to comply with the provisions of subparagraph (B) or (C) of paragraph (1) in any case in which the President certifies in writing to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate that to comply with the provisions of such subparagraph would cause serious damage to the national security of the United States.

Mr. KEMP (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. KEMP. Madam Chairman, my amendment would require the President to take the following actions when it became apparent that electronic communications of U.S. persons were being intercepted and monitored by foreign governments or their agents. First, the President would be requred to notify such person that his communications were being subjected to electronic surveillance by the foreign government. Second, the President would be required to notify the foreign government to cease and desist such surveillance, since the act is in violation of U.S. law. The President would be relieved of this responsibility in the event that he notify the House Permanent Select Committee on Intelligence and the Select Committee on Intelligence of the other body that to comply would cause grave harm to the national security interests of the United States.

Information has been reported recently in the press that millions of Americans are having their telephone calls monitored and recorded by the KGB from various locations in the United States. Further, the press reports that the Soviets are engaged in electronic surveillance of Government activities and defense contractors, private businesses, stock and commodity exchanges, national and international banking institutions, and perhaps even the press, universities and other centers of information and research concentration.

It would appear that the Soviets carefully plan for this activity by determining the routes of communications, so as to optimize intercept capability. Further, it appears that the locations for new consulates and trade missions have been carefully selected to provide even greater opportunities for the Soviets to intercept personal information, and business and monetary secrets of our citizens and corporations. This situation could grow more serious in the near future as new consulates and trade missions are opened. Further, the techniques involved in electronic surveillance are neither technologically difficult, nor expensive. There is no guarantee that other foreign governments, and their intelligence organizations, will not similarly invade the rights to privacy guaranteed under the provisions of the fourth amendment.

The bill under consideration would provide protection to those few U.S. persons who were subjected to electronic surveillance by our intelligence organizations and, under the provisions of Executive Orders 11905 and 12036, only a few U.S. persons have been subjected to electronic eavesdropping. It is ironic that, during this same period, millions of American citizens have had their privacy right violated with impunity by the Soviet Union.

The House in dealing with this legislation has a responsibility to the American people to do all in its power to protect their right to privacy. Apparently, the fourth amendment provisions of our Constitution do not apply to acts of foreign governments, but are limited to acts of the Government of the United States. In view of the activities of the intelligence services of foreign governments operating against U.S. persons within our territory, I believe we must provide statutory protection to limit these criminal actions. Adoption of my amendment would accomplish these objectives by warning U.S. persons of the fact, and notifying foreign governments to cease and desist, unless the President personally determined that to do so would cause grave harm to the national security interests of the United States.

Madam Chairman, I urge support for this amendment.

Mr. McCLORY. Madam Chairman, I rise in support of the amendment.

Madam Chairman, I want to commend the gentleman from New York (Mr. KEMP) on the amendment that is being offered. I think at a time when we are seeking to protect the privacy of U.S. citizens through our own efforts and through actions of our executive branch, and to the extent that we may be also involving the courts in this matter of protecting the privacy interests of U.S. persons, to ignore the fact that Americans' privacy is being violated in a wholesale way, as is reported to us through the press and through the debates that were carried on in the other body at the time this measure was debated there, seems to me to be quite unthinkable.

This is a very modest approach to the subject of protecting U.S. citizens against intrusion by electronic surveillance of a foreign power right in our midst, in this city, and perhaps in other cities and other areas of our country. To the extent that these reports are or may be true, it seems to me that the very least we can do is to adopt this amendment.

It is, of course, a further protection to U.S. citizens. In part of the debate we have had here, we talked about protecting the incidental rights of American citizens whose communications are incidentally listened into—that is, not intentionally, but just because they happen to get overheard accidentally or incidentally. What this amendment would do would be to attack that type of electronic surveillance which is directly or deliberately imposed upon American citizens, so I cannot see that there is any reason for this body not to support this.

The bill that the gentleman has sponsored and that is sponsored in the other body by Senator MOYNIHAN goes a long way and deals precisely with this subject. I might say that the amendment was drafted very carefully in order to be sure that it was germane and was not objectionable from a parliamentary standpoint. It seems to me that it is entirely appropriate that we should adopt it.

Mr. STRATTON. Madam Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from New York.

Mr. STRATTON. Madam Chairman, I would just like to join the gentleman from Illinois in support of the amendment of my colleague from New York (Mr. KEMP). As a matter of fact, I have an amendment that bears on this same situation, which Senator MOYNIHAN has recently brought to the attention of all of us.

I think the gentleman's amendment is a very valuable addition to the bill, and at the proper time in title III I shall be offering my own amendment which will, I believe, further provide some restrictions in connection with the same situation as the amendment of the gentleman from New York (Mr. KEMP).

Mr. McCLORY. I thank the gentleman.

Mr. MURPHY of Illinois. Madam Chairman, I rise in opposition to the amendment. It serves no useful purpose here in furthering the dialog on H.R. 7308 or in protecting Americans from unlawful foreign surveillances. The President, the intelligence agencies, and the congressional intelligence committees share the gentleman's concern and are fully aware of the intrusive activities that some governments engage in within our borders.

It is a sensitive and complex problem with sweeping intelligence and diplomatic ramifications.

I suggest to the gentleman that I think any further discussion here of the sensitive issues involved can only serve to aggravate the underlying problem which has nothing to do with the merits of H.R. 7308.

I assure the gentleman and my colleagues in the House that this Member and the Intelligence Committee will maintain the closest possible scrutiny of this delicate issue.

I think that on the floor of the House with our visitors and guests in the House is no place to discuss the sensitive issues involved.

Mr. KEMP. Madam Chairman, will the gentleman yield?

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

Mr. KEMP. Madam Chairman, I respect the gentleman's position. The gentleman knows I am not about to reveal anything that would hurt this Nation or its relations with other countries or the privacy of U.S. citizens. So I share that belief as far as the gentleman is concerned. I give him credit for that. I only bring it out because there have been reports about it. It was related in the Rockefeller report to the American people. So I apprecate the gentleman's attempts to deal with this quietly and in a proper forum, and I regret to having to bring it up, but it seems to me it is a legitimate concern to the American people, not by virtue of a KEMP or a MOYNIHAN bringing it up, but it was the subject of the Rockefeller report.

But if it is simply a matter of codifying what the gentleman has suggested, I cannot understand the gentleman's opposition to the amendment, thus making it a bigger issue.

It is just that it seems that this has been going on for quite some time? That is my only concern.

Mr. MURPHY of Illinois. Let me say that the methods the gentleman speaks about are very sensitive and sophisticated.

I just think now that, to go any further today with this dialog would be ill-advised.

Mr. ASHBROOK. Mr. Chairman, I move to strike the last word and I rise in support of the amendment offered by the gentleman from New York (Mr. KEMP).

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

Mr. ASHBROOK. Mr. Chairman, this amendment seems to present several of the arguments that I have heard on many amendments. For instance, I have heard it said a number of times, against amendments that I bring in that, well, a previous President agrees with the Carter administration on this bill so that makes it pass the litmus paper test.

Here it has been said that it would be premature to tread in this area. Let us be fair about it, Soviet eavesdropping was done in a previous administration and little was done, if anything. We have had the best part of 2 years of the new administration and little is done if anything. So it is not a partisan issue. I think there was a degree of allowing this to be the victim of détente, of looking the other way in both administrations. So it is not a partisan matter.

Mr. MURPHY of Illinois. Will the gentleman yield?

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

Mr. MURPHY of Illinois. The gentleman says nothing has been done. I do not know if the gentleman was present in the hearings, but definite moves have been made by the executive branch and the Secretary of the State in this matter. They are in the midst of bearing fruit. Also the fact that protective measures are being directed at those individuals that have been conducting it.

The gentleman is fully aware of what those moves are without my describing them today.

Mr. ASHBROOK. That is right, and the gentleman indicated that some people have been contacted, but the sheer multitude of eavesdropping indicates if there are tens of thousands of American conversations being monitored, nobody is making an effort to contact tens of thousands of people.

Mr. MURPHY of Illinois. I will say to the gentleman that the most sensitive, the people that have the most to lose have been contacted.

Mr. ASHBROOK. Then let us not get caught in that trap. All the arguments I have heard have been made, the gentlewoman from New York (Ms. HOLTZMAN) presented them, and I have heard them any number of times. We are supposedly vigilant for all Americans' rights. How many times have I heard it said in this debate that we must make sure we protect the rights of Americans?

I think the Kemp amendment is a pretty good test of whether Congress wants to show it is zealous to protect Americans' rights against our Government and against actions directed by Communist agents against Americans.

Mr. MURPHY of Illinois. I am sure the gentleman recognizes the fact that we gave the counterintelligence division $10 million in the last appropriation here for this very purpose.

Mr. ASHBROOK. I would add one point to my colleague, the gentleman from Illinois, and that is that I do not see that the Kemp amendment does anything that would be adverse to our national security or to our intelligence gathering effort. It merely requires the President of the United States to indicate what is going to be done on this subject. It is not going to trespass into the intelligence field.

Mr. KEMP. Mr. Chairman, if the gentleman would yield, I would say, just to enter into this colloquy, that this issue was fully aired and discussed on April 20 in the other body.

I can understand the gentleman's concerns, and they are shared by me, but I want to remind the gentleman that the article pubulished in the New York Times, which suggests that the administration is mapping a secret plan to counteract Soviet activity is kind of interesting, because here we are mapping out a public plan, a congressional plan to take care of domestic surveillance, and yet we are working on a secret plan, according to the New York Times, to deal with the activities of the Soviets.

Why are we so sensitive about that and less sensitive about the intelligence gathering agencies of the U.S. Government. It seems to me to be a little bit counterproductive.

Mr. MURPHY of Illinois. We are talking about a sensitive apparatus and sensitive methods. We are not talking about the fourth amendment rights of American citizens, basic rights under the Bill of Rights.

Let me say, further, that the junior Senator from New York that brought this up in the Senate, after he made his point, he withdrew the amendment which you can see if you read the debate.

Mr. KEMP. I have.

Mr. MURPHY of Illinois. That the Senate committee was working on this, too, and they have the same information that we have.

Mr. ASHBROOK. Mr. Chairman, let me reclaim my time to say that my colleague, the gentleman from New York (Mr. KEMP), is not becoming involved in sensitive apparatuses. He is not becoming involved in foreign policy. He is not becoming involved in intrigue. All he is saying is that this foreign surveillance is going on on a massive scale and it deserves some attention. We know that to be a fact.

Mr. Chairman, there is no reason that the Congress should not at least recognize that fact in what we are doing, not with respect to countermeasures, not with respect to sensitive equipment, but to emphasize the knowledge of this invasion of privacy, indeed, criminal invasion of privacy of the American people by the Soviet Union, to escalate that knowledge of something which is at least known by the public. Countermeasures or what is being done to protect us has nothing to do with the Kemp amendment.

Mr. BOLAND. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Let me suggest to my very good friend—and he is my friend—why does he not perform an act of statesmanship here, as was done by the junior Senator from New York? He has made his point in offering the amendment. Why does he not withdraw it?

One of the reasons I suggest that he do it is that as intelligent as he is, as smart and as persuasive as he is, he knows that this is a matter with ramifications which really travel beyond the matter which we are discussing today in this foreign intelligence surveillance bill. The gentleman from New York (Mr. KEMP) knows that.

He also knows that those ramifications do embrace other agencies of the Government such as the State Department and the Department of Commerce.

Mr. Chairman, it would occur to me that this is really not the place in which to accept this amendment.

The gentleman from New York (Mr. KEMP) has his own bill. He knows that he will get a hearing on that bill because it is a matter which the Congress is very interested in. He knows that he is going to get a hearing on the bill. He can bring that matter to the attention of the Congress at that time; and I am sure that with the persuasiveness of which he is so capable, we will get a bill which will answer the problems that he and the junior Senator from New York are so interested in.

Furthermore, the gentleman from

New York (Mr. KEMP) knows that the President is worrying about this matter and that the Congress is getting a look at it, as this committee is, and as are other committees, incidentally, of the House and Senate, too. He also knows that the President and the administration are engaged in the study of this very difficult problem; and hopefully, it will be resolved.

Again, why does not the gentleman perform that act of statemanship at this point? Why does he not withdraw his amendment? He is going to get a lot of credit for it anyhow.

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

Mr. BOLAND. I yield to the gentleman from New York.

Mr. KEMP. Mr. Chairman, I am sorry that the gentleman from Massachusetts (Mr. BOLAND) suggests that I might be doing this simply to get credit.

I am doing it to get the Soviets to cease and desist their electronic surveillance of American citizens, which now mounts into the tens of thousands or more. This fact has already been confirmed by the gentleman as well as by our friend, the gentleman from Illinois (Mr. MURPHY).

My point is that if we knew about this, why was not something done in conjunction with bringing this bill to the floor? Why am I now being asked to remove the amendment from consideration and to be a statesman and lower the profile of our concern for the rights of American citizens?

Why was not this matter brought to the attention of the committee at an earlier time so that we could have had a bill that would have dealt with both of these problems, not only the surveillance of American citizens by domestic intelligence agencies, but also that of foreign intelligence agencies?

Mr. BOLAND. That is a good question, and it deserves an answer.

Let me say emphatically to the gentleman from New York that I do not think the gentleman offered his amendment for the purpose of getting publicity. I am aware of his intense interest in this matter as well as of the interest of a lot of Members of Congress, a lot of members of this committee, and a lot of members of the New York delegation.

One of the reasons I presume—at least, it is my judgment—that we did not include this matter in this bill is that we are not the only committee involved here. The International Affairs Committee would be involved in this matter; there is no doubt about it. There are some diplomatic ramifications. Let me indicate to the gentleman, we had enough difficulty with the foreign surveillance intelligence bill without impacting with something that might give us additional trouble. That is my response to the gentleman from New York.

Mr. KEMP. Will my friend, the gentleman from Massachusetts, yield again?

Mr. BOLAND. I yield to the gentleman.

Mr. KEMP. I thank the gentleman for yielding.

This act creates or amends all of the applicable law on electronic surveillance, and it seems, therefore, that any electronic surveillance undertaken by an intelligence-gathering source, domestic or foreign, in this country, is a violation of the specific provisions of this bill. I cannot understand why the Congress ought not make clear our concern for these violations and force the Soviets to cease and desist. I personally would like to make them persona non grata, but I understand that might not be germane.

We worked, as the gentleman from Illinois (Mr. MCCLORY) said, with the Parliamentarian in trying to work out something that would be acceptable. It seems to me a reasonable attempt to assure the people of this country that we are concerned as much about their rights vis-a-vis foreign intelligence services, as we are about their rights vis-a-vis our own agencies. So I rest my case and hope that the gentleman will support it.

Mr. BOLAND. Mr. Chairman, I think this is the wrong place and the wrong time for this particular amendment, and I would hope that the committee would reject it.

The CHAIRMAN pro tempore (Mr. MURTHA). The question is on the amendment offered by the gentleman from New York (Mr. KEMP).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. KEMP. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN pro tempore. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee apears.

Members will record their presence by electronic device.

The call was taken by electronic device.

The CHAIRMAN pro tempore. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to report their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 732]

Abdnor	Conyers	Guyer
Ambro	Crane	Hagedorn
Ammerman	Danielson	Hansen
Andrews, N. Dak.	Davis	Harrington
	Delaney	Harsha
Archer	Dellums	Hawkins
Armstrong	Dent	Holt
Beilenson	Diggs	Holtzman
Bingham	Duncan, Oreg.	Huckaby
Bonker	Emery	Kasten
Brodhead	Erlenborn	Krueger
Burke, Calif.	Evans, Ga.	Leggett
Burke, Fla.	Fary	Lehman
Burton, Phillip	Fish	Long, La.
Byron	Flowers	Lundine
Cederberg	Forsythe	McCloskey
Chisholm	Fraser	McCormack
Clawson, Del	Frey	McDonald
Clay	Gibbons	McFall
Cochran	Goldwater	Madigan
Mahon	Rinaldo	Treen
Mathis	Risenhoover	Tsongas
Meeds	Roncalio	Tucker
Mikva	Rooney	Waggonner
Miller, Calif.	Runnels	Waxman
Murphy, N.Y.	Santini	Whitten
Neal	Scheuer	Wiggins
Ottinger	Shipley	Winn
Pepper	Sisk	Wright
Pettis	Skubitz	Yatron
Pike	Solarz	Young, Alaska
Pressler	Staggers	Young, Tex.
Quayle	Steed	Zablocki
Quie	Symms	Zeferetti
Quillen	Teague	
Rangel	Thone	

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. MURTHA, Chairman pro tempore 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, and finding itself without a quorum, he had directed the Members to record their presence by electronic device, whereupon 327 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

RECORDED VOTE

The CHAIRMAN pro tempore. The pending business is the demand of the gentleman from New York (Mr. KEMP) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 154, noes 230, not voting 48, as follows:

[Roll No. 733]

AYES—154

Anderson, Ill.	Forsythe	Moorhead, Calif.
Andrews, N. Dak.	Frenzel	Mottl
Applegate	Gammage	Myers, Gary
Archer	Gaydos	Myers, John
Ashbrook	Gilman	Nichols
AuCoin	Goldwater	Nowak
Bafalis	Goodling	O'Brien
Bauman	Gore	Oberstar
Beard, Tenn.	Grassley	Pritchard
Bennett	Green	Pursell
Biaggi	Hammer-schmidt	Quayle
Bowen	Harsha	Railsback
Breaux	Heckler	Regula
Brinkley	Hillis	Rhodes
Broomfield	Holt	Rinaldo
Brown, Mich.	Holtzman	Robinson
Brown, Ohio	Horton	Rousselot
Broyhill	Hyde	Rudd
Buchanan	Ichord	Runnels
Burgener	Jeffords	Ruppe
Butler	Johnson, Colo.	Santini
Caputo	Kemp	Sarasin
Carter	Kildee	Satterfield
Cederberg	Kindness	Sawyer
Clausen, Don H.	LaFalce	Schulze
	Lagomarsino	Sebelius
Cleveland	Latta	Shuster
Cohen	Leach	Smith, Nebr.
Coleman	Leggett	Snyder
Collins, Tex.	Lent	Spence
Conable	Levitas	Stangeland
Conte	Livingston	Stanton
Corcoran	Lott	Steiger
Coughlin	Lujan	Stockman
Cunningham	McClory	Stratton
Daniel, Dan	McDade	Stump
Daniel, R. W.	McDonald	Taylor
Davis	McEwen	Treen
Derwinski	McKinney	Trible
Devine	Madigan	Vander Jagt
Dickinson	Maguire	Walker
Dornan	Markey	Walsh
Drinan	Marks	Wampler
Duncan, Tenn.	Marlenee	Watkins
Edwards, Ala.	Marriott	Weiss
Edwards, Okla.	Martin	Whalen
Emery	Mathis	Whitehurst
Evans, Del.	Michel	Wilson, Bob
Evans, Ind.	Mikulski	Winn
Fenwick	Miller, Ohio	Wylie
Findley	Mitchell, N.Y.	Young, Fla.
Flowers	Moore	

NOES—230

Addabbo	Fountain	Nedzi
Akaka	Fowler	Nix
Alexander	Fuqua	Nolan
Ambro	Garcia	Oakar
Anderson, Calif.	Gephardt	Obey
	Giaimo	Ottinger
Andrews, N.C.	Ginn	Panetta
Annunzio	Glickman	Patten
Ashley	Gonzalez	Patterson
Aspin	Gradison	Pattison
Baldus	Gudger	Pease
Barnard	Hall	Pepper
Baucus	Hamilton	Perkins
Beard, R.I.	Hanley	Pickle
Bedell	Hannaford	Pike
Benjamin	Harkin	Poage
Bevill	Harrington	Preyer
Bingham	Harris	Price
Blanchard	Hefner	Rahall
Blouin	Heftel	Rangel
Boggs	Hightower	Reuss
Boland	Holland	Richmond
Bolling	Hollenbeck	Risenhoover
Bonior	Howard	Roberts
Bonker	Hubbard	Rodino
Brademas	Hughes	Roe
Breckinridge	Ireland	Rogers
Brodhead	Jacobs	Roncalio
Brooks	Jenkins	Rose
Brown, Calif.	Jenrette	Rosenthal
Burke, Mass.	Johnson, Calif.	Rostenkowski
Burleson, Tex.	Jones, N.C.	Roybal
Burlison, Mo.	Jones, Okla.	Russo
Burton, John	Jones, Tenn.	Ryan
Burton, Phillip	Jordan	Scheuer
Byron	Kastenmeier	Schroeder
Carney	Kazen	Seiberling
Carr	Kelly	Sharp
Cavanaugh	Keys	Sikes
Chappell	Kostmayer	Simon
Chisholm	Krebs	Skelton
Clay	Le Fante	Slack
Collins, Ill.	Lederer	Smith, Iowa
Conyers	Lloyd, Calif.	Solarz
Corman	Lloyd, Tenn.	Spellman
Cornell	Long, La.	St Germain
Cornwell	Long, Md.	Stark
Cotter	Luken	Steed
D'Amours	Lundine	Steers
Danielson	McCloskey	Stokes
de la Garza	McCormack	Studds
Delaney	McFall	Thompson
Dellums	McHugh	Thornton
Derrick	McKay	Traxler
Dicks	Mahon	Tucker
Dingell	Mann	Udall
Dodd	Mattox	Ullman
Downey	Mazzoli	Van Deerlin
Early	Meeds	Vanik
Eckhardt	Metcalfe	Vento
Edgar	Meyner	Volkmer
Edwards, Calif.	Milford	Walgren
Eilberg	Mineta	Waxman
English	Minish	Weaver
Ertel	Mitchell, Md.	White
Evans, Colo.	Moakley	Whitley
Evans, Ga.	Moffett	Whitten
Fascell	Mollohan	Wilson, C. H.
Fisher	Montgomery	Wilson, Tex.
Fithian	Moorhead, Pa.	Wirth
Flippo	Moss	Wolff
Flood	Murphy, Ill.	Wright
Florio	Murphy, N.Y.	Wydler
Flynt	Murtha	Yates
Foley	Myers, Michael	Young, Mo.
Ford, Mich.	Natcher	Young, Tex.
Ford, Tenn.	Neal	Zablocki

NOT VOTING—48

Abdnor	Fraser	Quie
Ammerman	Frey	Quillen
Armstrong	Gibbons	Rooney
Badham	Guyer	Shipley
Bellenson	Hagedorn	Sisk
Burke, Calif.	Hansen	Skubitz
Burke, Fla.	Hawkins	Staggers
Clawson, Del	Huckaby	Symms
Cochran	Kasten	Teague
Crane	Krueger	Thone
Dent	Lehman	Tsongas
Diggs	Mikva	Waggonner
Duncan, Oreg.	Miller, Calif.	Wiggins
Erlenborn	Murphy, Pa.	Yatron
Fary	Pettis	Young, Alaska
Fish	Pressler	Zeferetti

Mr. ROBERTS changed his vote from "aye" to "no."

Mr. MAGUIRE changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore. Are there any further amendments to title I?

The Clerk will read.

The Clerk read as follows:

TITLE II—CONFORMING AMENDMENTS

AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

SEC. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(2)(a)(ii) is amended to read as follows:

"(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

"(A) a court order directing such assistance signed by the authorizing judge, or

"(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.".

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

"(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.".

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting "under this chapter" after "communication".

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

(f) Section 2518(9) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after "communication".

(g) Section 2518(10) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after the first appearance of "communication".

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

Mr. MURPHY of Illinois (during the reading). Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the RECORD, and open to amendment at any point.

The Chairman pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN pro tempore. Are there amendments to title II?

The Clerk will read.

The Clerk read as follows:

TITLE III—EFFECTIVE DATE

EFFECTIVE DATE

SEC. 301. The provisions of this Act and the amendments made hereby shall become effective upon the date of enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act within ninety days following the designation of the chief judges pursuant to section 103 of this Act.

The CHAIRMAN pro tempore. Are there amendments to title III?

AMENDMENT OFFERED BY MR. STRATTON

Mr. STRATTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STRATTON: Page 68, strike out line 5 and all that follows down through "of this Act," on line 8 and insert in lieu thereof the following:

EFFECTIVE DATE

SEC. 301. The provisions of this Act and the amendments made by this Act shall not take effect unless the President certifies to the Congress that no individual who has diplomatic immunity conferred by the United States is, within the United States, intercepting by electronic means the communications of individuals in the United States on behalf of a foreign power and in violation of the laws of the United States. If the President makes such a certification, the provisions of this Act and the amendments made by this Act shall take effect upon the date of such certifications.

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

Mr. STRATTON. Mr. Chairman, the previous amendment referred to a situation which is also at the heart of my amendment, but for different reasons. The House was unwilling to accept the amendment of the gentleman from New York (Mr. KEMP) because of the possibility that it might lead to discussions

and disclosures about the extent of our information.

My amendment also is premised on the news we have received in the press lately about the intelligence activities of certain foreign governments operating here in the United States, and even in the city of Washington.

This bill, essentially, places limitations on the operation of United States intelligence. It provides restrictions so that we do not get into the errors and abuses of the past and it requires various things—or did until the amendment of the gentleman from Illinois and the gentleman from Pennsylvania were adopted on yesterday—to be performed before intelligence collection can begin.

In effect this legislation is based on the philosophical concept enunciated, I think it was by Mr. Justice Holmes, that "it is better that one guilty man go free than that the Government play an ignoble role."

That kind of Marquis of Queensberry approach to intelligence might have been all right back in the easy-going early days of the 20th century or the last part of the 19th century; but the world that we live in today is a different world, as it was made clear yesterday in the debate. No other nation, either in the free world or the Communist world or the third world, operates by the type of system that we are proposing to place upon our intelligence services in this bill. Certainly not our number one competitor, the Union of Soviet Socialist Republics; so it is obvious that if we are going to place these limitations on our own intelligence activities, we are going to be operating at a distinct disadvantage in a tough, competitive real world where intelligence operations are sometimes matters of life and death.

It is a little bit as though you went to a football game and one team was allowed to tackle while the other team was only allowed to say, "Please slow down." Obviously, that is not the kind of situation we want to be in as far as our national security is concerned today.

Senator MOYNIHAN has already indicated the extent to which these intelligence activities are going on in Washington today. I do not want to say more about them, because, as the distinguished chairman of the subcommittee, the gentleman from Illinois (Mr. MURPHY) has said, we are indeed getting into a sensitive area. But we ought to be aware of it. So it seems to me that it is a little ridiculous for us to enact this legislation under these circumstances, because we would be in effect adopting the Unilateral Intelligence Disarmament Act of 1978.

We are going to be "good guys," we are going to be clean, we are going to play by Marquis of Queensberry rules, but we are operating in a world in which nobody else follows that same procedure.

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

Mr. STRATTON. I will yield in just a moment.

Mr. Chairman, my amendment simply says that until American citizens are not being surveilled and "intelligenced" and spied upon in our country, we are not going voluntarily to restrict our own ability to protect ourselves against that kind of surveillance or insist on comparable intelligence to protect our own security.

Mr. Chairman, I will be glad to yield now to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Chairman, I thank th gentleman for yielding.

As I understand the gentleman's amendment, it only relates to the effective date of this legislation.

The CHAIRMAN pro tempore (Mr. MURTHA). The time of the gentleman from New York (Mr. STRATTON) has expired.

(On request of Mr. McCLORY, and by unanimous consent, Mr. STRATTON was allowed to proceed for 2 additional minutes.)

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

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

Mr. McCLORY. Mr. Chairman, the legislation we are discussing here relates to restrictions and restraints which circumscribe our exercise of electronic surveillance of foreign agents and foreign powers for foreign intelligence. So all the gentleman is asking in this amendment is that the effective date of this legislation be postponed, and that these restraints and guidelines be imposed at such time as we are assured that similar electronic surveillance of American citizens by foreign agents or foreign powers has been discontinued.

In other words, we do not want to leave ourselves open to their electronic surveillance while we are preventing ourselves from engaging in that kind of intelligence gathering.

Mr. STRATTON. Exactly. The gentleman from Illinois (Mr. McCLORY) has expressed it very clearly.

We are living in a real world in which people are zeroing in on us, and we would be foolish, it seems to me, to impose these restrictions, which everybody acknowledges do limit the effectiveness of our intelligence, at a time when we are going to be hard pressed to maintain our own operations. That is all that is involved here.

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

Mr. STRATTON. I am glad to yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, there are, of course, various constitutional restrictions in the Bill of Rights on our Government, such as the fourth amendment itself.

The argument the gentleman is making would require that we suspend the Bill of Rights until all the other countries in the world impose similar restrictions on their governments. I do not really see that that is practical.

Mr. STRATTON. Mr. Chairman, I do not think the gentleman from Ohio (Mr. SEIBERLING) was here last night when I had the opportunity to address the committee. I find that my remarks somehow never got into the RECORD, and so the gentleman may unfortunately be prevented from ever reading that "deathless prose."

What I was referring to were the fairly successful intelligence operations going on in this country during World War II and even before World War II. I believe we can all be grateful that those operations were not embargoed by the very restrictions we are instituting in this bill.

Mr. FOWLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, speaking on behalf of the committee, if we adopt the Stratton amendment as it is proposed, including that language that requires that we postpone the effective date of this act until the President certifies to Congress that no individual with diplomatic immunity conferred by the United States is engaging in electronic surveillance in the United States, that would require us to reveal—and I stress the hypothetical nature of my example—that if we determine that friendly governments such as the Government of New Zealand, for instance, was using electronic surveilling in this country against the Government of Australia, then this would cause this act not to go into effect.

In other words, the Stratton language is so broad that, if our Government gains knowledge of any electronic surveillance by any government against any other government within the borders of this country, then this would vitiate the entire act under the Stratton amendment.

Also, as if that were not reason enough to defeat this amendment, let me say this. First, I might say that I know the position of the gentleman from New York (Mr. STRATTON), because I heard what he referred to as his "deathless prose" last night. We are trying to protect the ability of this country to preserve the finest intelligence surveillance system in the world, and if we are to certify to the Congress or to the Executive or to anybody else that we know everything about what our enemies or our allies are doing in the electronic surveillance field, we are in the old Western position of revealing how our ambush is better than their ambushes, and immediately our enemies will have ways of targeting on us to find out how we know what we know from what we must reveal if the Stratton amendment passes.

It is overly broad, it is completely unworkable, it would work against our allies as much as it would work against our enemies, and I urge rejection of the amendment.

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

Mr. FOWLER. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Chairman, I would point out to the gentleman that the text of my amendment says that—

> . . . intercepting by electronic means the communications of individuals in the United States on behalf of a foreign power and in violation of the laws of the United States.

It is the interception on behalf of a foreign power in violation of our laws that we are asking be certified as nonexistent before we will adopt these procedures ourselves.

In other words, the gentleman appears to be suggesting that we allow activities in violation of our laws, and I do not

think he really would want that to happen.

Mr. FOWLER. Mr. Chairman, the only place I will agree with the gentleman from New York (Mr. STRATTON) is that the basis of spying is nasty business. We are talking about spying. We are violating laws, both of this country and of others by spying, laws that are protected by the first and fourth amendments to the Constitution. What this legislation attempts to do is to set precise standards so that we balance that need for collection; that is, spying, and at the same time protect the rights of American citizens when those rights do not have to be violated.

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

Mr. FOWLER. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman makes a very good point. I am against the amendment, and I join the gentleman in opposition to it.

I would ask the gentleman one further question. The administration of this, the handling, the mechanics of putting the Stratton amendment into play just completely befuddle me. If I understand the language, if the millennium ever arrives and nobody is spying on anybody, the Stratton amendment goes into effect. And what happens on the day when the spying resumes? Would the gentleman suggest that the Stratton amendment ceases to be in effect?

Mr. FOWLER. First of all, I cannot conceive of the scope of the administrative bureaucracy that would have to be set up in order for the President to make this determination.

Mr. MAZZOLI. That is right.

Mr. FOWLER. And, of course, everything the legislation is trying to protect would have to be held in abeyance.

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

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

Mr. KASTENMEIER. I thank the gentleman for yielding.

Mr. Chairman, would not the gentleman from Georgia concede that the enactment of the Stratton amendment would in effect make the President a prisoner, literally, of persons beyond Presidential control because of diplomatic immunity? It makes a mockery of the whole process, in effect.

Mr. FOWLER. I certainly agree with the distinguished gentleman.

Mr. KASTENMEIER. Certainly the amendment ought to be rejected. I agree with the gentleman.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New York (Mr. STRATTON).

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 68 after line 15, add the following new section:

SUNSET PROVISION

SEC. 302. The provisions of this Act and the amendments made by this Act shall expire at the end of the five-year period beginning on the date of enactment of this Act.

Mr. DRINAN. Mr. Chairman, in general I do not favor the adoption of sunset provisions, calling for positive action by Congress to reenact a bill by a date certain. H.R. 7308, however, breaks so much new ground, contains so many provisions which are subject to differing interpretations, and deals to such a large extent with so many of our most fundamental rights, including the fourth amendment, that I believe it is essential that we reconsider this bill in its entirety after we have had an opportunity to study its implementation.

The amendment which I propose is a simple one. It states that the terms of this act shall expire 5 years after the date of its enactment. This will provide us with the time to consider the actual impact of this bill and also provide answers to the many questions which H.R. 7308 raises. How will the unprecedented three-judge special courts function? Will warrants be granted almost as a matter of course, as some fear, or will the intelligence agencies be denied the opportunity to conduct surveillance which is needed, as others believe? Can we depend upon rigid adherence to the rule of secrecy? Precisely how broadly will the intelligence agencies define the terms "foreign power" and "agent of a foreign power"? To what extent will some law enforcement agencies abuse the privileges granted by H.R. 7308 to obtain information about a wide range of individuals and activities not subject to the surveillance authorization?

One of the most important distinctions drawn by H.R. 7308 is between citizens and resident aliens on the one hand and all other persons within the United States on the other. Insofar as I am aware, there is little constitutional support for such a distinction, especially when it is a central concept of legislation which deals directly with the bill of rights. Many people in the United States are neither citizens, nor resident aliens, nor engaged in espionage of any kind. Tourists, lecturers, businessmen, scholars and others all visit the United States regularly. Yet these individuals are not accorded the same protections as citizens and resident aliens. The first and fourth amendments refer to people, not just citizens. To what extent will we, by passing this measure, diminish the scope of these amendments and subject our guests to eavesdropping? To this question, as to the others, we have no answer.

In a more general sense, a sunset provision will insure that, after a reasonable period of time within which to evaluate the act, we will be able to balance the amount and the importance of the intelligence information collected under the terms of this bill against its intrusions on our first and fourth amendment rights. The important respects in which this bill departs from our existing intelligence gathering methods mandate a comprehensive review of the act after we have seen its results. The only way to make absolutely certain that we have the opportunity to conduct such a review is by adopting a sunset provision.

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

Mr. DRINAN. I will be happy to yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, it seems to me that this is most appropriate legislation in which to have a so-called sunset amendment. We are venturing into ground that has been uncharted. It is an unprecedented piece of legislation. Many aspects of this legislation are really without precedent, and consequently I think a 5-year limitation on the legislation is highly desirable.

Mr. Chairman, I am happy to support the gentleman's amendment.

Mr. DRINAN. I thank the gentleman for his support.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the purpose of this bill is to assure Americans that their rights are being protected and to provide a sound legal basis for the continuation of vital foreign intelligence programs. Having it expire in 5 years' time puts both those principles in jeopardy.

If there were to be a delay in the legislative process and the bill was not passed again on time, the status of protection of individual rights and the legality of surveillances would be endangered.

The Senate has announced that it will take a hard look at this statute on an annual basis to determine if it needs to be modified on the basis of experience. That seems a far sounder approach where such important issues are at stake and the committee will certainly pledge to do that also.

The CHAIRMAN pro tempore. 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 21; noes 28.

Mr. DRINAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

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

Mr. BOLAND. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the distinguished gentleman from North Carolina (Mr. PREYER).

Mr. PREYER. Mr. Chairman, I thank the distinguished gentleman from Massachusetts for yielding to me. I wish to ask the chairman of the committee at this time if I am correct in my understanding that in accordance with section 2, 2(c) of House Resolution 658, jurisdiction to study and review intelligence activities other than those dealing exclusively with the Central Intelligence Agency is to be shared concurrently with the committee by other committees that have exercised jurisdiction over these activities in the past.

The Government Information and Individual Rights Subcommittee, which I

chair, has in the past held numerous hearings on such matters as the interception of nonverbal communications by Federal intelligence agencies and the notification to victims of improper intelligence activities. For this reason, I think the subcommittee's jurisdiction in the area of intelligence surveillance has been established.

I would appreciate the comments of the gentleman from Massachusetts (Mr. BOLAND) regarding this matter.

Mr. BOLAND. Mr. Chairman, in response to the question propounded by the gentleman, let me say that his understanding of House Resolution 658, establishing the House Permanent Select Committee on Intelligence, and his reference to section 2, 2(c) of that resolution conferring jurisdiction to study and review intelligence activities other than those dealing exclusively with the CIA, is to be shared concurrently with the committee by other committees that have exercised jurisdiction over these activities in the past is correct. Those committees that have exercised jurisdiction of these activities in the past will continue to have that jurisdiction.

And as he has indicated, his Subcommittee on Government Information and Individual Rights has actually dealt with some of the matters we are dealing with, and we will continue to share that jurisdiction with his subcommittee and the full committee.

Mr. PREYER. I thank the gentleman.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. McCLORY:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Foreign Intelligence Electronic Surveillance Act of 1978".

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TITLE II—CONFORMING AMENDMENTS

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TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

DEFINITIONS

SEC. 101. As used in this title:

(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.

Such term shall not apply to any United States person solely upon the basis of activities protected by the first amendment of the Constitution.

(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 or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the foreign policy or security 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 activities for or on behalf of a foreign power under circumstances which indicate that such activities are contrary to the foreign policy or security interests of the United States;

(B) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(C) conspires with or knowingly aids or abets any person engaged in any activity described in subparagraph (A) or (B).

Such term shall not apply to any United States person solely upon the basis of activities protected by the first amendment of the Constitution.

(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 on 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;

(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) "Minimization procedures", with respect to a particular electronic surveillance, means specific procedures, reasonably designed in light of the purpose and technique of the surveillance, to minimize the acquisition, retention, and dissemination of nonpublicly available information concerning unconsenting United States citizens consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information. To achieve such minimization, the Attorney General shall adopt procedures which shall include, where appropriate—

(1) provisons for the destruction of unnecessary information acquired through the surveillance;

(2) provisions with respect to what information may be filed and on what basis, what information may be retrieved and on what basis, and what information may be disseminated, to whom, and on what basis;

(3) provisions for the deletion of the identity of any United States citizen acquired through the surveillance if such identity is not necessary to assess the importance of or to understand the information;

(4) provisions relating to the proper authority in particular cases to approve the retention or dissemination of the identity of any United States citizen acquired through the surveillance;

(5) provisions relating to internal review of the minimization process; and

(6) provisions relating to adequate accounting of information concerning United States citizens that is used or disseminated.

In addition, the procedure shall include provisions that require that nonpublicly available information that is not foreign intelligence information, as defined in subsection (e)(1), shall not be disseminated in a manner which identifies any individual United States citizen, without such person's consent, unless such person's identity is necessary to understand foreign intelligence in-

formation or to assess its importance; and shall allow for the retention and dissemination of information that is evidence of a crime that 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 of enforcing the criminal law.

(h) "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).

(i) "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.

(j) "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.

(k) "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.

(l) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(m) "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.

(n) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and the Trust Territory of the Pacific Islands.

AUTHORIZATION OF ELECTRONIC SURVEILLANCE TO OBTAIN FOREIGN INTELLIGENCE INFORMATION

SEC. 102. (a) Electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information may be authorized by the issuance of a surveillance certificate in accordance with subsection (h). If the target of the electronic surveillance is a United States citizen, the issuance of a certificate under oath and signed by the President stating that such electronic surveillance would be in accordance with the criteria and requirements of this title shall also be required.

(b) Electronic surveillance authorized under subsection (a) may only be performed according to the terms of a surveillance certificate issued in accordance with subsection (h).

(c) Electronic surveillance may be authorized under this section for the period necessary to achieve its purpose, except that—

(1) if the target of the surveillance is not a foreign power, the period of the surveillance may not exceed ninety days; and

(2) if the target of the surveillance is a foreign power, the period of the surveillance may not exceed one year.

(d) An electronic surveillance authorized under this section may be reauthorized in the same manner as an original authorization, but all statements required to be made under subsection (h) for the initial issuance of a surveillance certificate shall be based on new findings.

(e)(1) Notwithstanding any other provision of this title, if the Attorney General or Deputy Attorney General determines that—

(A) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before the requirements of subsection (a) can be followed; and

(B) the factual bases exist for the issuance of a surveillance certificate under subsection (h) to approve such surveillance,

the Attorney General or Deputy Attorney General, as the case may be, may authorize the emergency employment of electronic surveillance if, as soon as is practicable, but not more than forty-eight hours after the Attorney General or Deputy Attorney General authorizes such surveillance, the requirements of subsection (a) are met as they would have been.

(2) If the target is a United States citizen, the Attorney General or Deputy Attorney General shall notify the President at the time of such authorization that the decision has been made to employ emergency electronic surveillance.

(3) If the Attorney General or Deputy Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title be followed.

(4) If electronic surveillance is authorized under this subsection, it shall terminate when the information sought is obtained or after the expiration of forty-eight hours from the time of authorization, whichever is earliest. In the event that the requirements of subsection (a) are not met, all information obtained or evidence derived from electronic surveillance authorized under this subsection shall be destroyed within forty-eight hours of such determination, except that a record of the facts surrounding the Attorney General's or Deputy Attorney General's authorization and the failure to meet the requirements subsection (a) shall be made and preserved with all other records which under this title are required to be retained.

(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 persons incidentally being 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)(1) Upon the issuance of a surveillance certificate under this section, the Attorney General may direct a specified communication or other common carrier, or a landlord, custodian or other specified person, to—

(A) 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 or person provides its customers; and

(B) maintain any records concerning such surveillance or the assistance furnished by such common carrier or person that such common carrier or person wishes to retain under security procedures approved by the Attorney General and the Director of Central Intelligence.

(2) Any direction by the Attorney General under paragraph (1) shall be in writing.

(3) The Government shall compensate any common carrier, landlord, custodian, or other specified person at the prevailing rate for assistance furnished pursuant to a direction under paragraph (1).

(4) Any individual may, for reasons of conscience, refuse to comply with a direction from the Attorney General under paragraph (1).

(h) A surveillance certificate issued under subsection (a) 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 United States citizen;

(B) certifying that the target of the surveillance is a foreign power or an agent of a foreign power; and

(C) certifying 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;

(2) a statement of the basis for the certification under paragraph (1) that—

(A) the target of the surveillance is or is not a United States citizen;

(B) the target of the surveillance is a foreign power or an agent of a foreign power; and

(C) 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;

(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 a United States person, a statement that the information sought cannot reasonably be obtained by normal investigation techniques;

(7) 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;

(8) a statement of the period of time for which the surveillance is required to be maintained;

(9) a statement of the means by which the surveillance will be effected;

(10) if the nature of the intelligence gathering is such that the approval of an electronic surveillance under subsection (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;

(11) a statement indicating whether or not an emergency authorization was made under subsection (e); and

(12) 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.

USE OF INFORMATION

SEC. 103. (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 discloure is accompanied by a statement that such information, or any information derived therefrom, may only be used for or disclosed in any 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 aggrieved 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 be disclosed or used that the Government intends to so disclose or so use such information.

(d) Before any State or political subdivision thereof may 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 must receive from the Attorney General an authorization to so use such information. Upon receiving such authorization, the State or political subdivision thereof shall notify the aggrieved person and the court or other authority in which the information is to be disclosed or used 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 court, or if the case is before a court of a State or a subdivision thereof, then before the United States district court of the judicial district in which the case is pending, to determine the lawfulness of the electronic surveillance. 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 court shall, nowithstanding any other law, if the Attorney General files an affidavit under oath with the court that disclosure would harm the national security of the United States or compromise foreign intelligence sources and methods, review in camera the surveillance certificate 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 such determination, the 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.

(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 surveillance certificates 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 court of appeals of the circuit in which the case is pending an affidavit under oath that 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 or other authority, the 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 surveillance certificate 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 court of appeals shall disclose, under appropriate security procedures and protective orders, to the aggrieved person or his attorney, portions of the surveillance certificate or other materials relating to the surveillance only if necessary to afford due process to the aggrieved person.

(h) If the court pursuant to subsection (f) or the 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 court pursuant to subsection (f) or the 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 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 court or court of appeals granting disclosure of surveillance certificates or other materials relating to a surveillance shall be binding upon all courts of the United States and the several States except the courts of appeals and the Supreme Court, and shall be final orders for purposes of appeal.

(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.

CONGRESSIONAL OVERSIGHT

SEC. 104. On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all electronic surveillance under this title. Nothing in this chapter 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. 105. (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), 102(b), 102(d), 102(e), 103(a), 103(b), 103(j), or 107 or any order issued pursuant to this chapter, knowing his conduct violates such section or such order.

(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 were authorized by and taken pursuant to a surveillance certificate or otherwise did not violate any provision of 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 in this section if the person was an officer or employee of the United States at the time the offense was committed.

CIVIL LIABILITY

SEC. 106. 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 disclosed or used in violation of section 105 of this chapter shall have a cause of action against any such person who committed such violation and shall be entitled to recover—

(1) actual damages, but not less than liquidated damages of $1,000 or of $100 per day for each day of violation, whichever is greater;

(2) punitive damages, where appropriate; and

(3) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

RETENTION OF RECORDS

SEC. 107. All surveillance certificates and all documents used to support the issuance of surveillance certificates shall be retained for a period of not less than twenty years and shall be stored at the direction of the Attorney General under security procedures approved by the Director of Central Intelligence.

TITLE II—CONFORMING AMENDMENTS

AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

SEC. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(2)(a)(ii) is amended to read as follows:

"(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Electronic Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person has been provided with—

"(A) a court order directing such assistance signed by the authorizing judge, or

"(B) a certification under oath and signed by a person specified in section 2518(7) of this title of the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.".

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

"(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Electronic Surveillance Act of 1978, as authorized by that Act.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Electronic Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Electronic Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.".

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting "under this chapter" after "communication".

(e) Section 2518(4) is amended by inserting "under this chapter" after "wire or oral communication" both places it appears therein.

(f) Section 2518(9) is amended by striking out "intercepted" and by inserting "intercepted pursuant to this chapter" after "communication".

(g) Section 2518(10) is amended by striking out "intercepted' and by inserting "intercepted pursuant to this chapter" after "communication" the first place it appears therein.

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

TITLE III—EFFECTIVE DATE

EFFECTIVE DATE

SEC. 301. The provisions of this Act and the amendments made hereby shall become effective upon the date of enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or a surveillance certificate authorizing that surveillance is obtained under title I of this Act within ninety days following such date of enactment.

Mr. MCCLORY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The amendment has been printed in the RECORD previously.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. MCCLORY. Mr. Chairman, this is the substitute amendment about which there has been a great deal of information circulated. As a matter of fact, this is the substitute measure which has the support of a large number of Members on both sides of the aisle. A "Dear Colleague" letter was circulated bearing the signatures of 21 Democratic Members and 15 or 16 Republican Members, noting that this substitute was the preferable procedure for handling the subject of foreign intelligence and electronic surveillance.

What the substitute amendment does in essence, is to translate the existing Presidential guidelines issued formerly by President Ford and more recently by President Carter, into statutory form.

Let me say that the guidelines and restrictions are more circumscribed than are the provisions in the committee bill. For one thing there is a requirement that in order to engage in electronic surveillance of any foreign agent, foreign power, or a U.S. person, it has to be authorized by an executive department official who has been confirmed by the Senate. This is someone over whom we can exercise oversight.

If it relates to the exercise of electronic surveillance of a U.S. citizen, then it requires action by the President of the United States himself.

I do not think that there is any greater imposition on the executive department or Presidential responsibility contained in the substitute amendment. Nor is there any better way in which we can have executive department accountability. It seems to me that is where we want the accountability to be. The reason we have oversight committees is so that we can oversee what the executive does. If there are abuses, then we can take some appropriate action against them.

It is only the political personnel, the executive department officials, and the Members of Congress over whom the public has any control. We are the political entities in this great system of government, that we have and we are the ones that can be called to account for any abuses of our authority. And so it seems to me that this substitute is far superior to one which delegates to the judicial branch the authority to decide whether or not we shall have electronic surveillance.

If the judiciary abuses its authority, or serves as a patsy to the executive branch, and we find persons subjected to electronic surveillance who were not previously subjected, are we going to be able to discipline the court? Certainly not.

Or, if the judiciary denies the executive the opportunity to engage in electronic surveillance for our national security and defense purposes, are we going to be able to discipline the court? Certainly not.

If, for instance, the court decides that something that comes to its attention should be made public when, in fact, it should not be made public, is there any way to discipline the court? None whatsoever.

The only way we can discipline those charged with the responsibility regarding electronic surveillance of foreign intelligence is to repose that responsibility and accountability in the executive branch of the Government.

So, Mr. Chairman, in a sense, that is what my amendment does.

It is supported by all of the former intelligence officers, and by their entire

association. It is supported by virtually all of the former leaders in the intelligence community. If you wonder why we have support for the bill from those who have more recently been appointed, you will find that what they are saying, in effect, is that they can support the administration's bill. They can go along with it. They can live with it. And, of course, they are responding in a very obedient way to the demands of the executive.

The Washington Star has commented very favorably on this amendment. Former Deputy Attorney General Lawrence Silverman has commented favorably on this amendment.

The CHAIRMAN pro tempore. The time of the gentleman has expired.

(By unanimous consent, Mr. McCLORY was allowed to proceed for 1 additional minute.)

Mr. McCLORY. This is the last amendment. If this substitute can be adopted I can assure you that we will have effective electronic surveillance of foreign intelligence gathering while not experiencing any abuses. I can say under the existing executive guidelines that there is no evidence before our Committee on the Judiciary of any abuses, and I see none forthcoming. However, if any occur, we can find far more effective ways of taking care of them than the proposed bill.

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

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. McCLORY).

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

Mr. MURPHY of Illinois. Mr. Chairman and my colleagues, the McClory substitute is opposed by the administration and every intelligence agency.

It will not clear up the overriding legal issue of whether warrants are or are not required. It will not change the existing situation in which field agents are hesitant to rely on the Attorney General's orders. It sets no standard of proof to guide the executive officials in approving surveillances. Even the current executive branch guidelines require the Attorney General to find probable cause to believe that the target is an agent of a foreign power.

It allows electronic surveillance of American citizens with no showing of any connection with any criminal activity required.

The substitute allows common carriers and others to refuse to provide assistance to the government in the conduct of foreign intelligence surveillances.

Mr. Chairman, the gentleman from Illinois talked about the editorial of the Washington Star in support of his substitute. We have editorials from the New York Times, the Washington Post, the Chicago Tribune, the American Bar Association, all in support of the committee's well-thought-out legislation.

We have a letter from former President Ford.

I have talked personally with former Attorney General Levi, the present Attorney General, the President of the United States and they are all in favor of this legislation.

This legislation is the result and the work product of 3 years of intensive study of hearings and reports of over six committees. To scrap it now after all this work would appear to me to be the height of irresponsibility.

I respectfully urge my colleagues to oppose the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. McCLORY).

Mr. WRIGHT. Mr. Chairman, I hope my colleagues will reject this additional attempt to alter and redirect the entire thrust of this carefully drafted bill.

Rarely in the years that I have spent in the Congress have I seen a bill which was the product of so many labors. Rarely have I seen one which has brought together often disparate thoughts into one well-crafted piece of legislation supported by practically all of the thinking elements of our society. It is a shame that we have failed, apparently, to recognize the care and precision with which this particular legislation has been drafted.

Not only do I hope that we will reject the total McClory substitute; I hope that when a separate vote is requested in the House, we will reflect very carefully upon what was done in haste yesterday and will reject the McClory amendment which does away with the requirement of a warrant.

The requirement of a warrant was asked for by the FBI Director, Mr. Webster, when he appeared before the committee. It was asked for by the Director of the CIA, Admiral Turner. It was asked for by Chief Hinman of the National Security Agency. It was agreed to by all of those people as a protection for the agents of the United States against the jeopardy they otherwise might face with respect to criminal prosecution or civil suits.

President Carter wants this committee bill passed. President Ford wants this committee bill passed. Civil liberties groups have embraced and endorsed the committee bill. The distinguished chairmen of the Intelligence Committee of the House, the International Relations Committee of the House, the Judiciary Committee of the House, and of the Armed Services, Appropriations, and Budget Committees of the House all want this committee bill passed. The 95 U.S. Senators who voted for its companion measure want this bill passed.

Most important of all, perhaps, the Directors of the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation want this committee bill passed. They believe that it will strengthen and assist them and give them tools which they have needed for a long time, and that it will clarify their rights and remove the jeopardy in which their agents sometimes are presently placed.

Mr. Chairman, I do hope the Members will recognize the enormous amount of time that has gone into the crafting of this particular piece of legislation, will respect its carefully balanced provisions, and will reject the McClory substitute; and when the time comes, on a separate vote, will reverse the narrow margin by which yesterday, in haste, the House adopted an ill-considered amendment.

Mr. RUDD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as a former FBI special agent for 20 years who spent many of those years in the foreign intelligence area, I would implore this body to adopt the McClory substitute as an alternative to H.R. 7308.

Mr. Chairman, one of the benefits of this substitute over the committee's proposal is that it will accomplish the objective of tightening up the procedures for conducting electronic surveillance for foreign intelligence purposes without compromising essential speed in emergency and other special situations.

The McClory proposal does not open up the Pandora's box of judicial involvement in the intelligence process. However, it does insure public accountability of the executive branch in its conduct of intelligence operations by requiring a much greater involvement by Congress and particularly of the special intelligence committees which we have established for that purpose.

I sincerely believe that the McClory substitute adequately meets all of the concerns which have been raised about former intelligence surveillance without compromising the essential speed and confidentiality of the intelligence activities which would occur under the committee bill.

Mr. Chairman, I urge passage of the McClory substitute.

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

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

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

I just want to point out that former President Ford, in his speech at the University of South Carolina, stated in part as follows:

> 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.

President Ford's position has been made clear there that he does not subscribe to this business of passing the responsibility on to the courts. I would like to point out, too, that while it is true that the ACLU has tremendous input insofar as this legislation is concerned, this is merely a foot in the door. This is merely a foot in the door. What they really want to get a warrant requirement with regard to informants and informers of the FBI, and that is well known. Of course, the New York Times editorial of July 26 pointed out that in their opinion electronic surveillance was less offensive than an informant who intrudes on individuals and organizations and then in-

forms the law enforcement agencies of the information that he has gathered. So I think that we should be very, very cautious before we venture into this area of a warrant requirement for foreign intelligence surveillance. I am hopeful that on a rollcall vote we can have a favorable vote on this substitute and then move on by in effect translating the very valid guidelines that the Executive has established into statutory form for permanent control of foreign intelligence electronic surveillance.

I thank the gentleman for yielding.

Mr. RUDD. No intelligence agency, no police agency can operate very long without dependable sources, and that is why this McClory substitute is a necessary substitute for H.R. 7308.

Mr. Chairman, I yield back the remainder of my time.

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

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

Mr. MAZZOLI. Mr. Chairman, I would just take a brief few seconds to endorse what was recently said by the majority leader of the House, who I think eloquently stated in the well of the House the reasons why this McClory amendment, as well as the McClory amendment which was adopted by the House last night in haste, which will be revoted on in a few minutes, ought to be defeated.

H.R. 7308, which came out of the committee headed by the able gentleman from New Jersey (Mr. RODINO) and came out of the committee headed by the able gentleman from Massachusetts (Mr. BOLAND) is a very carefully developed bill which satisfies the unique and sometimes desperate needs of all of the intelligence community, those organizations and groups dealing with civil liberties in America, and those groups dealing with law enforcement. Mr. Chairman, it seems that if we deprive, take away—we strip away that protection. We strip away that device which gives security to those people and to all individuals, and then it seems to me that we have gutted the bill. I think instead of having the best of both worlds, we have the worst of both worlds.

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

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

Mr. McCLORY. I thank the gentleman for yeilding.

We have differences of opinion as to what a good foreign intelligence surveillance bill should provide, but I merely want to point out that the Committee on the Judiciary did not consider this legislation. As a matter of fact, what happened there was that there was a motion to table. The motion to table succeeded, and the matter remains in the Committee on the Judiciary right now, which in effect means that the bill is really not on the floor from the Committee on the Judiciary in any sense at all.

Mr. MAZZOLI. I appreciate the gentleman's comments. I think we spoke last night to the very point that the distinguished chairman of the subcommittee, the gentleman from Wisconsin (Mr. KASTENMEIER) conducted 3 days of very complete hearings and very vigorous debate, and I would say that probably in those 3 days this bill got as much attention as it might have gotten in many other committees of the House in perhaps weeks. It was a serious-minded effort, Mr. Chairman. I would hope that the Committee of the Whole House on the State of the Union would reject the gentleman's statement.

The McClory substitute and his amendment of yesterday would harm—not help—the Government's future ability to conduct surveillance of foreign persons in the United States.

First, it leaves a cloud of legal uncertainty over the surveillance of foreigners in the United States. There are grave doubts about the constitutionality of discriminating against all nonresident aliens simply on the basis of their being "foreigners." The Constitution requires reasonable grounds for any discrimination against aliens. The Supreme Court might easily find that there are no reasonable grounds for the blanket exclusion of all nonresident aliens from the fourth amendment warrant protection.

Second, this risk means that FBI agents and other intelligence officials will continue to act at their peril. Anyone who proceeds with the Attorney General's approved only—and no judicial warrant—has no certainty that his acts are constitutional. This is likely to keep intelligence agents from acting vigorously because their conduct might still, in the future, be considered illegal.

Third, the Attorney General himself will surely be reluctant to approve surveillances of nonresident aliens as long as these doubts persist. Without a warrant, he is left where he is now. He needs the support of legislation that includes a warrant to resolve any serious constitutional doubts in this area.

The purpose of the bill is to assure that the legality of surveillance is as clear as possible. Limiting the warrant to U.S. persons or having no warrants at all does not achieve that goal. Instead, it raises new constitutional questions that will inhibit intelligence gathering.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFEERD BY MR. M'CLORY

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

POINT OF ORDER

Mr. MURPHY of Illinois. Mr. Chairman, a point of order.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. MURPHY of Illinois. Mr. Chairman, this amendment is not germane in that it is not timely printed in the RECORD. The gentleman came up to us just a few minutes ago and said the gentleman had printed it in the RECORD yesterday; but the rule issued July 12 requires it be reported 3 legislative days prior to consideration.

The CHAIRMAN pro tempore. The Chair will rule that the rule applies to amendments to the bill and not to amendments to amendments. In this case we have an amendment to a substitute amendment, so the rule does not apply.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ to the amendment in the nature of a substitute offered by Mr. MCCLORY: On page 24, line 24, after "SEC. 104" insert "(a)".

On page 25, after line 6 insert:

(b) 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—

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

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

(c) And in April of each year the Attorney General shall transmit a report to the appropriate Member of Congress or Congressional Committee on any information gathered by virtue of this act regarding any foreign government's attempt to improperly influence Congress, suborn individual Members or to threaten a Member.

Mr. GONZALEZ. Mr. Chairman, I offer this amendment to the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. MCCLORY) because it is the only opportunity that I have a chance to bring up a matter that I thought had been properly taken care of in other sections of the bill; but after looking at the bill and making a reading of the bill, I find that every consideration seems to have been given to the executive branch of the Government, to the FBI, to the CIA and the other surveillance agencies, but nothing safeguarding the basic rights of Members of Congress.

Let us suppose that in the course of a foreign intelligence wiretap or microphone surveillance, information is gathered that indicates some foreign power is attempting to bribe or otherwise suborn a Member of Congress. This is information that the Congress needs to know in order that we may protect our integrity, but the bill does not require, nor does the substitute amendment, that reports bearing on the integrity of the Congress be made available to us.

My experience has been that most statutes, such as those in title XVIII that make it mandatory for the FBI to investigate any threats of violence against the Congress, the FBI interprets that to mean they should investigate, but never report to the Congressman involved.

I have had three cases in which I have been unable to this day to get a written report from the FBI concerning information pursuant to threats that the FBI investigated; so that is the interpretation these agencies have given the statutes we have written for our protection.

Now, let us continue here and say that we have this hypothetical situation. A foreign intelligence gathering system reflects after our surveillance agencies have found out by virtue of the powers we give them in this act that a Member or Members of Congress are involved. The Executive can sit back with this information. He does not have to impart

it to the Members or other Members of Congress.

Let us suppose further that a surveillance indicates some dishonest behavior on the part of a Member. Does the bill require that a complete and immediate investigation be undertaken, and that the House be informed? It does not. Instead, such information can be held at the leisure and the pleasure of the Executive, the President, who may use it in any way he pleases. Can we imagine what would have happened just a few years ago with that power?

Let us suppose that one of our colleagues has in some way become entangled with a foreign government. Should we not know this? And should we not know if some foreign power is attempting to sway our actions one way or another? But the bill does not require that we be informed.

These are not hypothetical problems. There have been occasions in the past in which I have some good reason to know that there has been some forbearance in the case of Members who feared some retaliation on the part of the executive branch or who feared prosecution. If the Speaker or the Ethics Committee had known of any investigations involving these Members, there could have been some actions taken to disqualify at least the votes rendered in that case, if the House had been informed of the action of other governments in the past.

For instance, let us take the case of the Korean Government. We could have averted scandal and tragedy. As it is, we do not know what actions might have been taken to protect individual Members from being suborned, to protect the integrity of the House, and, as I have said, to cause even Members influenced by actions of Korean agents to disqualify themselves from voting on issues involving that country. The existence of such a system to help assure our own integrity would have caused that government never to have attempted to play its game of influence.

This bill does not address such questions. Because of the fact that the rule made it impossible to offer any amendment after the discovery of the need for it during the debate and because of the 3-day legislative rule, the only chance I have had to offer this amendment for consideration is under these circumstances as an amendment to the amendment offered by the gentleman from Illinois (Mr. McCLORY).

It is certainly true that intelligence gathering is in the national interest. I am not certain that civil rights are best protected by legitimizing what amounts to warrantless search. I am even less certain that a special court has any more competence to protect individual rights than any other court.

This bill has profound importance, because it establishes in law practices that heretofore have been of at best questionable legality, and confirms in law Presidential powers that have heretofore only been claimed to exist, never really legitimized. We are dealing here with questions that affirm—if we pass this bill—powers that Presidents have claimed they had, implicit powers or residual powers—previously undefined. These are but poorly charted constitutional grounds, and none of us should mistake the fact that we are in fact creating new powers here, in the name of confining quasi-legal practicles to some definable procedural law.

This is why this bill is embraced by the administration; it assures that the powers it now exercises only in legal peril can hereafter be exercised with impunity. We are confining nothing; we are confiding wholly new powers instead.

The CHAIRMAN pro tempore. The time of the genteman from Texas (Mr. GONZALEZ) has expired.

Mr. MURPHY of Illinois. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman from Texas (Mr. GONZALEZ) brings an amendment to us late in the day. This bill has been under consideration for over 3 years. At least during the last 6 or 7 months or during the whole session of this Congress it has been thoroughly considered, and the gentleman brings this amendment to us at this late date. I am not saying that what the gentleman has to say is not meritorious, but this is not the manner to bring it up and discuss it in the waning moments of the consideration of the bill.

I urge my colleagues to reject this amendment. Then we will invite the gentleman from Texas (Mr. GONZALEZ) before our committee. I would be happy to have the gentleman testify before the committee and bring any information in that he has. The gentleman talks about a Member of Congress who might have been involved in the Korean scandal. My understanding of the situation is that the Member who pleaded guilty in that matter was engaged actively in the bribery that came about, so I do not imagine that if he was told about it ahead of time, it would have made much difference.

Mr. GONZALEZ. Mr. Chairman, will the distinguished chairman of the subcommittee yield?

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

Mr. GONZALEZ. Mr. Chairman, my amendment has been offered at a late date, for which I have apologized, but because of the fact of the narrowness of the rule accompanying this bill, I believe that had we been untrammeled in our consideration of the bill, I could have offered the amendment in a timely fashion.

Mr. MURPHY of Illinois. Mr. Chairman, does the gentleman realize that the rule was granted on July 12?

Mr. GONZALEZ. Right.

Mr. MURPHY of Illinois. The rule was granted on July 12, and the gentleman had from July 12 until last week to put his amendment into the RECORD.

Mr. GONZALEZ. That is correct.

Mr. MURPHY of Illinois. Does the gentleman say that is not enough time?

Mr. GONZALEZ. Mr. Chairman, it is a question of the sufficiency of that kind of a rule and the fact that this ought to be a body that should be untrammeled in the free flow of debate, because there are many things involved, and even if one knows of the existence of a rule, since one is not a member of the committee, he is going to have to wait for the full general debate and get the fine nuances of the facts before offering an amendment.

Mr. MURPHY of Illinois. There have been over 50 amendments printed in the RECORD, and I would imagine there have been over 100 "Dear Colleague" letters circulated.

Mr. GONZALEZ. Mr. Chairman, although, as I said, I admit that maybe we should have acted sooner, I want to get to the merits and the sufficiency of this amendment.

If the gentleman will bear with me a little further, this amendment encompasses what the gentleman has in the bill now accept the last four lines, in which I provide for a report to be made in a case involving an individual Member of the committee or of the House, and it provides that he will be informed. That is the only thing involved.

Will a Member have an opportunity to be informed that surveillance has discovered that he is involved? He may be an unwitting victim. Yet we are saying the executive branch ought to be the sole and exclusive judge as to his comportment and it is under no obligation to convey that information to him.

Mr. MURPHY of Illinois. Mr. Chairman, let me say to the gentleman that the intelligence agencies have to report to this committee on a semiannual basis, and they have to report all warrants or wiretaps taking place.

The counterintelligence division of the FBI talks to us constantly about the nature of the Soviet involvement within this country. I can assure the gentleman, speaking as chairman of the Legislative Committee, and, I am sure, the gentleman from Massachusetts (Mr. BOLAND), as chairman of this committee, that we would be glad to inquire of the FBI; and when we get that information I can assure the gentleman that we would inform any Member if any foreign government were attempting to influence Members of this House. The gentleman has my word.

Mr. GONZALEZ. I know the gentleman is very sincere in that.

Let me just add one thought, in addition. Let us look what we are doing now in the case of Korea. We are actually providing that Members be exposed, under no protection of our traditional constitutional rights, in the case of the interrogation of the former Korean ambassador. He could involve in his testimony an innocent Member who is wholly and completely vulnerable to the whims of a particular foreign agent.

Mr. MURPHY of Illinois. The gentleman has me at a disadvantage. I am not a member of the Ethics Committee that undertook the investigation into the Korean scandal. I do not think this is the forum or the time to discuss this. I know Members of Congress have been accused. I would like to afford any Member his day in court which is his due. I do not wish to discuss it on the floor. I have no information with relation to that.

The CHAIRMAN pro tempore. The time of the gentleman from Illinois (Mr. MURPHY) has expired.

(On request of Mr. CHARLES H. WILSON

of California and by unanimous consent, Mr. MURPHY of Illinois was allowed to proceed for 1 additional minute.)

Mr. CHARLES H. WILSON of California. Mr. Chairman, if the gentleman will yield, I do not want to discuss Korea, especially; but I was a little concerned, though, that the principal argument the gentleman had against the Gonzalez amendment was that it was submitted at a late hour in the day. When is a good time to submit an amendment? Would the gentleman tell me, please? What time of the day should we put in our amendments?

Mr. MURPHY of Illinois. If the gentleman will yield, a rule was granted on July 12. We had hearings for a year and one-half prior to that. This bill has been under consideration for 3 years.

Mr. CHARLES H. WILSON of California. Is there some rule that we have that prohibits a Member from putting in an amendment or that says when to put in amendments?

Mr. MURPHY of Illinois. We live by and go by the Rules of the House. The gentleman is aware of the open and closed rules. We do not need to get into that now.

I would like to say that I can assure the gentleman from Texas, as chairman of the Legislative Subcommittee, I will make inquiry into all of the intelligence agencies as to whether they have any information about any foreign government attempting to influence legislators.

The CHAIRMAN pro tempore. The time of the gentleman from Illinois (Mr. MURPHY) has again expired.

(On request of Mr. BOLAND and by unanimous consent, Mr. MURPHY of Illinois was allowed to proceed for 1 additional minute.)

Mr. BOLAND. Mr. Chairman, if the gentleman will yield, in response to the question propounded by my friend, the distinguished gentleman from California (Mr. CHARLES H. WILSON), frankly, I do not think either the gentleman from Illinois (Mr. MURPHY) or myself can give a very sound answer when amendments are to be offered. My only suggestion is you do not offer them after 9 o'clock at night because nobody seems to get any amendments adopted at that time. And I think the gentleman from California understands the response of the gentleman from Illinois (Mr. MURPHY) with reference to the rule itself which was granted on July 12. We then had 3 legislative days prior to consideration of this bill for any amendments to be printed in the RECORD. As the gentleman indicated, we have had something like 50 amendments, and maybe even more than that.

I think we have a reasonable rule. I do not think anybody can quarrel with that rule. I can understand the concern of the gentleman from Texas about this particular matter and, so far as this Committee is concerned, the assurance that has been given by the chairman of the Legislative Subcommittee I would agree with, and this is a matter which ought to be looked at a little bit more carefully. I do not think this is the time to do it.

Mr. Chairman, I oppose the amendment.

Mr. KAZEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to remind my good friend, the gentleman from Illinois, concerning the question of time limits on amendments, this is the very first opportunity that the gentleman from Texas has had to offer this amendment, since it would not have been in order under the rule before this time, until the gentleman from Illinois (Mr. MCCLORY) offered his amendment. This is an amendment to the McClory amendment. If the Gonzalez amendment is too late, the McClory amendment is too late. But so far as the timeliness is concerned, this is the earliest opportunity in the entire debate, in the entire consideration of this bill, that the gentleman from Texas had to offer his amendment.

I am not debating the merits of the amendment. I am questioning the point that the gentleman from Illinois has made on the procedure in this matter.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ) to the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. MCCLORY).

The amendment to the amendment in the nature of a substitute was rejected.

The CHAIRMAN pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. MCCLORY).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. MCCLORY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 128, noes 249, not voting 55, as follows:

[Roll No. 734]

AYES—128

Andrews, N. Dak.	Flynt	Myers, John
Applegate	Forsythe	Nedzi
Archer	Fountain	Nichols
Ashbrook	Gammage	O'Brien
Bafalis	Goldwater	Poage
Bauman	Goodling	Pursell
Beard, Tenn.	Gradison	Quayle
Bevill	Grassley	Regula
Bowen	Hall	Rinaldo
Breaux	Hammer-schmidt	Roberts
Brinkley	Harsha	Robinson
Broomfield	Hightower	Rousselot
Brown, Mich.	Hillis	Rudd
Brown, Ohio	Holt	Runnels
Broyhill	Hyde	Ruppe
Buchanan	Ichord	Satterfield
Burgener	Jenkins	Schulze
Burleson, Tex.	Jones, N.C.	Sebelius
Butler	Kelly	Shuster
Carter	Kindness	Sikes
Cederberg	Lagomarsino	Skubitz
Chappell	Latta	Smith, Nebr.
Clausen, Don H.	Lent	Snyder
Coleman	Livingston	Spence
Collins, Tex.	Lott	Stangeland
Conable	Lujan	Stanton
Corcoran	McClory	Steiger
Coughlin	McDonald	Stockman
Cunningham	McEwen	Stratton
Daniel, Dan	Madigan	Stump
Daniel, R. W.	Mahon	Taylor
Devine	Marriott	Treen
Dickinson	Martin	Trible
Dornan	Mathis	Vander Jagt
Duncan, Tenn.	Michel	Walker
Edwards, Ala.	Milford	Walsh
English	Miller, Ohio	Wampler
Erlenborn	Mitchell, N.Y.	Watkins
Evans, Del.	Moore	Whitehurst
Fish	Moorhead, Calif.	Whitley
Flippo	Murphy, N.Y.	Wilson, Bob
Flowers	Myers, Gary	Wydler
		Wylie
		Young, Fla.

NOES—249

Addabbo	Ford, Tenn.	Murtha
Akaka	Fowler	Myers, Michael
Alexander	Frenzel	Natcher
Ambro	Garcia	Neal
Anderson, Calif.	Gaydos	Nix
Anderson, Ill.	Gephardt	Nolan
Andrews, N.C.	Giaimo	Nowak
Annunzio	Gilman	Oakar
Ashley	Ginn	Oberstar
Aspin	Glickman	Obey
AuCoin	Gonzalez	Ottinger
Baldus	Gore	Panetta
Barnard	Green	Patten
Baucus	Gudger	Patterson
Beard, R.I.	Hamilton	Pattison
Bedell	Hanley	Pease
Benjamin	Hannaford	Pepper
Bennett	Harkin	Perkins
Biaggi	Harrington	Pickle
Bingham	Harris	Pike
Blanchard	Heckler	Preyer
Blouin	Hefner	Price
Boggs	Heftel	Pritchard
Boland	Holland	Rahall
Bolling	Hollenbeck	Railsback
Bonior	Holtzman	Rangel
Bonker	Horton	Reuss
Brademas	Howard	Risenhoover
Breckinridge	Hubbard	Rodino
Brodhead	Hughes	Roe
Brooks	Ireland	Rogers
Brown, Calif.	Jacobs	Roncalio
Burke, Mass.	Jeffords	Rose
Burlison, Mo.	Jenrette	Rosenthal
Burton, John	Johnson, Calif.	Rostenkowski
Burton, Phillip	Jones, Okla.	Roybal
Byron	Jones, Tenn.	Russo
Carney	Kastenmeier	Ryan
Carr	Kazen	Santini
Cavanaugh	Keys	Sarasin
Chisholm	Kildee	Scheuer
Clay	Kostmayer	Schroeder
Cleveland	Krebs	Seiberling
Cohen	LaFalce	Sharp
Collins, Ill.	Leach	Simon
Conte	Lederer	Skelton
Conyers	Le Fante	Slack
Corman	Leggett	Smith, Iowa
Cornell	Levitas	Solarz
Cornwell	Lloyd, Calif.	Spellman
Cotter	Lloyd, Tenn.	St Germain
D'Amours	Long, La.	Staggers
Danielson	Long, Md.	Stark
Davis	Luken	Steed
de la Garza	Lundine	Steers
Delaney	McCloskey	Stokes
Dellums	McCormack	Studds
Derrick	McDade	Thompson
Derwinski	McFall	Thornton
Dicks	McHugh	Traxler
Diggs	McKay	Tucker
Dingell	McKinney	Udall
Dodd	Maguire	Ullman
Downey	Mann	Van Deerlin
Early	Markey	Vanik
Eckhardt	Marks	Vento
Edgar	Marlenee	Volkmer
Edwards, Calif.	Mattox	Walgren
Edwards, Okla.	Mazzoli	Waxman
Eilberg	Meeds	Weaver
Emery	Metcalfe	Weiss
Ertel	Mikulski	Whalen
Evans, Colo.	Mineta	White
Evans, Ga.	Minish	Whitten
Evans, Ind.	Mitchell, Md.	Wilson, C. H.
Fascell	Moakley	Wilson, Tex.
Fenwick	Moffett	Wirth
Findley	Mollohan	Wolff
Fisher	Montgomery	Wright
Fithian	Moorhead, Pa.	Yates
Flood	Moss	Young, Mo.
Florio	Motti	Zablocki
Ford, Mich.	Murphy, Ill.	
	Murphy, Pa.	

NOT VOTING—55

Abdnor	Gibbons	Rhodes
Ammerman	Guyer	Richmond
Armstrong	Hagedorn	Rooney
Badham	Hansen	Sawyer
Bellenson	Hawkins	Shipley
Burke, Calif.	Huckaby	Sisk
Burke, Fla.	Johnson, Colo.	Symms
Caputo	Jordan	Teague
Clawson, Del	Kasten	Thone
Cochran	Kemp	Tsongas
Crane	Krueger	Waggonner
Dent	Lehman	Wiggins
Drinan	Meyner	Winn
Duncan, Oreg.	Mikva	Yatron
Fary	Miller, Calif.	Young, Alaska
Foley	Pettis	Young, Tex.
Fraser	Pressler	Zeferetti
Frey	Quie	
Fuqua	Quillen	

The Clerk announced the following pairs:

On this vote:

Mr. Teague for, with Mr. Richmond against.

Mr. Kasten for, with Mr. Zeferetti against.

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Mr. BURLISON of Missouri. Mr. Chairman, I move to strike the last word.

(Mr. BURLISON of Missouri asked and was given permission to revise and extend his remarks.)

Mr. BURLISON of Missouri. Mr. Chairman, I believe that legislation is needed to clear up the existing confusion and uncertainty surrounding the use of electronic surveillance, and that H.R. 7308, as reported, is best calculated to achieve this purpose.

For the past year I have had the privilege and responsibility of chairing the Intelligence Committee's Subcommittee on Program and Budget Authorization. I also serve on the Appropriations Subcommittee on Defense. As a result, I have spent a good deal of my time meeting with intelligence officials. I have attempted to use these meetings, the resources of the committee, and the budget authorization process itself, to obtain a useful understanding of the workings and complexities of our intelligence agencies.

In so doing, I have come to a few basic conclusions:

The people working in our intelligence services are competent men and women of good faith, dedicated to serving the national interest.

Occasionally, their view of what is in the national interest is clouded by their very dedication.

In its programmatic and budget concerns the intelligence community behaves like any other Government bureaucracy that must seek funding from the Congress.

These conclusions are not by any means novel or the result of any particular insight. But they did aid me in thinking through my position on H.R. 7308 when it came to the full committee from the Subcommittee on Legislation.

I do support this measure but, as my colleagues on the committee know, I had to be convinced.

The first question I had to answer for myself was whether electronic surveillance was a necessary and efficient method of obtaining needed foreign intelligence information. So I spoke to intelligence officials, listened to their testimony at both open and closed hearings, read the budget justification books, and made myself aware of some of the product of electronic surveillance activities. As a result, I concluded that such activities are, indeed, an essential part of our intelligence operations.

My next endeavor was to determine if legislation was needed to authorize, regulate, or control such activities. It soon became readily apparent that the answer was "yes"—not only because of the well known excesses and abuses committed pursuant to national security wiretaps, but also because of the political and legal uncertainties which surround the use of electronic surveillance.

Clearly, it seemed to me, our intelligence agents need legislation to authorize and legitimize their activities; and other American citizens need legislation to protect their legitimate privacy rights.

So, the question then became one of deciding whether H.R. 7308, with its judicial warrant requirement, was the proper legislation.

Having been a county prosecuting attorney for several years, I was familiar with warrants and the concepts behind them. I know the protections warrants afford, and that activities engaged in pursuant to a judicial warrant were more readily accepted as proper by the people of the community.

But I was also skeptical. I wondered if the bill's standards and procedures went too far. Was there an overreaction that would thwart our intelligence collection efforts?

I talked to some intelligence officials. I read their statements. I listened to their testimony given in executive session.

I heard the Director of Central Intelligence say that H.R. 7308 was good legislation that would not unduly burden intelligence collection.

I heard the Director of the National Security Agency state his unqualified support for H.R. 7308, as reported by the Intelligence Committee.

I heard the Director of the FBI say that the bill and its warrant requirement, including a warrant for embassies and other official foreign powers, would facilitate the work of and improve the morale of his agents.

I also heard Director Webster state that the bill's compromise version of a criminal standard for surveilling Americans was fully supported by him, because it was not the criminal standard required for law enforcement warrants.

Finally, I heard the Attorney General say that both he and the field agent needed the protections that could best be provided by a warrant, and that passage of H.R. 7308 would facilitate, not hinder, intelligence collection.

In summary, I have become convinced that electronic surveillance is a means of intelligence collection that must be utilized; that it is susceptible to abuse if not regulated by statute; and that H.R. 7308, as reported is carefully balanced legislation that will authorize needed intelligence activities while protecting the legitimate interest of our intelligence agents and our people. I hope the House will overturn the McClory amendment in the full House and pass the bill.

Mr. McCLORY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is my understanding that a separate vote will be requested with regard to amendment No. 2, the McClory amendment that was adopted yesterday by a very narrow margin. I know there has been a great deal of activity undertaken to try to switch votes in order to try to change the outcome of that vote result when we get to the separate vote on that amendment after we return to the House. I am hopeful that the Members will hold the line and will, indeed, support this important amendment. I do not want any confusion as to the substitute that we just voted upon. The substitute was, indeed, my legislation. It was my view that we should establish clear statutory guidelines for conducting foreign intelligence surveillance. But my proposal would have eliminated the warrant requirement with regard to all foreign intelligence surveillance. It would have eliminated the court proceedings from the entire picture, and it would have done other things that I felt were desirable.

The amendment that I offered yesterday, which was favorably acted upon, was an amendment which would eliminate the warrant requirement for all except U.S. persons. In other words, there would be no need to go to a judge and have a judge decide whether or not the executive branch could conduct foreign intelligence surveillance. We are only talking about foreign powers and foreign agents and we are only talking about that insofar as national security is concerned. We are only talking about targeting foreign agents and foreign powers that will be defined in this bill. So the only change that would result from my amendment is that we would not have to go to a judge when we want to engage in foreign intelligence, national security intelligence, when these foreign powers or foreign agents are involved.

With regard to U.S. persons, we would still have this requirement. We know, that after the adoption of my amendment, we adopted overwhelmingly an amendment that will eliminate the special court, so that in the situation we are in now with no special court, unless we retain the McClory amendment, is that we will have a large barrage of applicants for warrants, which would be very burdensome for the district courts throughout the entire country.

In my opinion, the House acted very wisely in eliminating the special courts. This unprecedented provision for a special court with special prerogatives, special tenure, and all that sort of thing was appropriately eliminated from the bill; but without that and with a warrant requirement that would be so far reaching as to reach every foreign agent and every foreign power it seems unthinkable to me that we would want to restore such a provision.

I might say that the committee did adopt an amendment in the committee, which was my amendment No. 9, which excludes a large part of the foreign intelligence surveillance from the warrant requirement, where foreign powers are communicating with each other.

It seems to me appropriate that we should also eliminate the warrant requirement when we want to target in on foreign agents or foreign powers, by radio, telephone, even by television. Without my amendment you could not televise the Soviet Embassy unless you first got a court order. Now, how absurd can you get?

It seems to me the McClory amendment makes a lot of sense. It makes a

much better bill than the bill that the committee reported.

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

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

Mr. ASHBROOK. Mr. Chairman, first of all, I want to commend my colleague, the gentleman from Illinois. I know often work is done around this Chamber that is not appreciated by all of us; but I cannot express my appreciation enough for what the gentleman has done. The gentleman from Illinois has been diligent and worked hard and been on the right track.

Let me repeat what the gentleman said. I think the McClory amendment is absolutely necessary to this legislation. I am one who over the time we have been hearing this legislation gradually developed the view that we probably ought to wait until next year until the charter legislation comes up and tie this all together. But if this bill is necessary I think we should at least have the McClory amendment as a part of it.

In a lighter vein, let me say to my colleague that I have been the author of four amendments in the last session that have been rejected when we went into the House. Those who were listening to the debate voted for them and then when we go back in the Whole House in a separate vote, quite often the good intelligence and good sense of the Members have been reversed for some mysterious reason.

I hope this does not happen to the gentleman from Illinois, but it has happened to me four times in the last year.

Mr. Chairman, I had hoped that this bill could be amended enough so it could be supported by those of us who are concerned about the state of our Nation's security.

H.R. 7308 has been recommended to us as both a bill to authorize surveillance in foreign espionage and terrorism cases, and, as a protection for the American people. The bill as it now stands does not do enough of either. The protections for foreign agents are too broad while the authorization to surveil them is too narrow. The only effect this bill will have on the freedom of the American people is to weaken the defenses we have against foreign agents and terrorists. If we cannot protect our country, we will really lose our freedoms.

During the next session Congress will be considering charter legislation for the intelligence agencies. The argument for such legislation is that it will provide "a carrot and a stick" for the intelligence community. "A carrot" in the sense that it will protect them by spelling out their duties and responsibilities. "A stick" in the sense that it will spell out restrictions. H.R. 7308 will upset that balance by placing some of the restrictions on in advance. Foreign intelligence wiretaps are clearly part of the charter package. In fact, this bill, or its equivalent, appears as title III in the proposed charter bill.

Mr. BOLAND. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let the members of this committee understand precisely what we are going to vote on when we ask for a separate vote on the McClory amendment. That amendment would delete the warrant requirements for all targets—all targets, except U.S. persons.

I join with my distinguished friend, the gentleman from Ohio (Mr. ASHBROOK) in commending the gentleman from Illinois (Mr. McCLORY) for the gentleman's continual and persistent work on this particular bill. It has not been easy. We started at 3 o'clock yesterday afternoon, wound up after 9 o'clock last night. We started at some time around 2 o'clock today and it is now 6 o'clock in the evening; so we have spent considerable time on it.

Let me also say to the members of this committee that we have accepted a number of amendments that have been offered by Members on the other side of the aisle and also some offered by Members on this side. We have to go to conference on this bill. That is going to be a very difficult conference. The Senate bill is a bill which was not acceptable to a lot of the Members on both sides of this aisle, and because it was not accepted, some of the Members on both sides of the aisle, and to the members of the Select Committe on Intelligence, we perfected the Senate bill and brought the bill that we are now discussing to the floor and adopted the McClory amendment that we hope will be knocked out when we come to a separate vote on that particular amendment.

Mr. Chairman, all the intelligence committee agents and all the agents of our intelligence communities oppose the McClory amendment. It would be open season, it seems to me, on all foreign visitors. Tradesmen, athletes, teachers—you name them—anybody coming to the United States, whether they are from Russia, France, England, or any nation, if they are foreigners, they would be subject to surveillance without a warrant under the terms of the McClory amendment.

Need I recall for the Members the abuses that have occurred in the past, in years gone by?

All of these abuses or the majority of them that were detailed by the Church committee, detailed by the Pike committee, or detailed by any committee that has looked into this particular matter have been made known. These abuses occurred, because there was surveillance of foreign embassies and foreigners, and American names became involved. Then the names of those Americans were turned over to someone else in the administration that was in power at that time, be it a Republican administration or a Democratic administration.

Mr. Chairman, that is what we are trying to get rid of here. We are trying to get rid of the abuses. This bill was submitted by President Ford and by Attorney General Levi, and it was resubmitted by President Carter and Attorney General Bell. Their position is that this bill is a well-balanced bill, one that protects the national interests and the national security. It also protects, as I say, the constitutional rights of American citizens and foreigners who are in this land and who are entitled to the same protection under the fourth amendment as U.S. persons who are permanent resident-alien.

Mr. Chairman, it would be a disaster for this committee to accept the amendment offered by the gentleman from Illinois (Mr. McCLORY). We would then bring this bill to conference, and do we think that the other body is going to cave in on this amendment? This is a disastrous amendment. It ought to be rejected. I hope it is soundly defeated when we get back into the House and vote on it.

The CHAIRMAN pro tempore. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. MURTHA, Chairman pro tempore 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, pursuant to House Resolution 1266, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole?

Mr. BOLAND. Mr. Speaker, I demand a separate vote en bloc on the McClory amendments agreed to on September 6, and I demand a separate vote on the conforming McClory amendments agreed to on today.

The SPEAKER. Is a separate vote demanded on any other amendment to the Committee amendment? The Clerk will report the amendments en bloc on which a separate vote has been demanded.

PARLIAMENTARY INQUIRIES

Mr. BAUMAN. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. BAUMAN. Mr. Speaker, is it proper for the gentleman from Massachusetts (Mr. BOLAND) to demand a separate vote en bloc on the amendments, or must he ask for a vote on each one of these amendments?

The SPEAKER. The Chair will state that the rule provides that it shall be in order to consider the amendments en bloc, so under the rule the vote on the amendments would be considered as on the amendments en bloc.

Mr. BAUMAN. The amendments were considered en bloc?

The SPEAKER. Yes, under the rule.

Mr. BAUMAN. Mr. Speaker, am I correct that the original McClory amendment was considered separately and that the several others were adopted subsequently?

Mr. McCLORY. Mr. Speaker, if the gentleman will yield, I might inform the gentleman that the conforming amendments were considered separately, and the other amendments were considered en bloc.

Mr. BAUMAN. Mr. Speaker, may I inquire, on which amendment is it that the gentleman from Massachusetts (Mr. BOLAND) demands a separate vote? I wish the Chair would let the House know so we will know what we are voting on.

The SPEAKER. The Chair will state that the amendments offered by the gentleman from Illinois (Mr. McCLORY) that were agreed to yesterday will be voted on en bloc today. That is in conformance with the demand made by the gentleman from Massachusetts (Mr. BOLAND).

Mr. BAUMAN. A further parliamentary inquiry, Mr. Speaker.

The gentleman mentioned the McClory amendment and all amendments agreed to en bloc. So do we now face three or four separate votes?

The SPEAKER. The McClory amendment agreed to today is a separate amendment.

The Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: 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 a 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 unobtrusively and 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 subsection (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 50, strike out line 22 and all that follows down through line 6 on page 51, and redesignate subsections (d) through (g) accordingly.

Page 51, line 9, strike out ", except that" and all that follows down through line 13 and insert in lieu thereof: ".".

Page 51, line 17, strike out ", except that an" and all that follows down through line 23 and insert in lieu thereof: ".".

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 having jurisdiction under 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. BOLAND (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

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

Mr. BAUMAN. Mr. Speaker, reserving the right to object, I do so only to ask the gentleman from Illinois (Mr. McCLORY) a question.

The pending amendment now to be voted on is not a series of amendments en bloc, but only the amendment which was adopted yesterday in the Committee of the Whole; is that correct?

Mr. McCLORY. If the gentleman will yield, that is correct. The only thing that has occurred since the adoption of the McClory amendment yesterday was the adoption today by unanimous consent of two conforming amendments.

We had attempted to have those conforming amendments embodied in the bill yesterday, but that request was refused; so we did offer those conforming amendments today.

Mr. BOLAND. Mr. Speaker, if the gentleman will yield, in response to the question of the gentleman from Maryland, let me say that the amendment that we will be voting on is the McClory amendment No. 2, which deletes the warrant requirements of U.S. persons. The other amendments which were offered and accepted today by the Committee were accepted en bloc. But they are conforming amendments which will conform to the amendment that was offered yes-

terday by the gentleman from Illinois and accepted by the Committee.

Mr. McCLORY. Mr. Speaker, if the gentleman will yield further, I would say that there is this aspect involved, too: There was the Railsback amendment to my amendment which was adopted today, and I do not see how we can have a separate vote on that by putting them all en bloc. I think that what we require is separate votes, a separate vote on my amendment, and, if you wish to have a separate vote on other amendments, to request them separately.

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, I just want the assurance of the Chair that we are voting on nothing but the McClory amendment adopted last night by the Committee. Is that correct?

The SPEAKER. The Chair must say, as modified today by the Railsback amendment.

Mr. BAUMAN. I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to dispensing with further reading of the amendment?

There was no objection.

The SPEAKER. The question is on the amendment.

The question was taken; and the Speaker announced that the noes appeared to have it.

Mr. McCLORY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 176, nays 200, not voting 56, as follows:

[Roll No. 735]

YEAS—176

Alexander	Dickinson	Leach
Ambro	Dingell	Lent
Anderson, Ill.	Dornan	Livingston
Andrews, N. Dak.	Duncan, Tenn.	Lloyd, Tenn.
Applegate	Edwards, Ala.	Lott
Archer	Edwards, Okla.	Lujan
Ashbrook	Emery	Luken
Bafalis	English	McClory
Bauman	Erlenborn	McCormack
Beard, Tenn.	Ertel	McDade
Bennett	Evans, Del.	McDonald
Bevill	Evans, Ind.	McEwen
Blanchard	Fish	McKay
Bowen	Flippo	McKinney
Breaux	Flowers	Madigan
Brinkley	Flynt	Marlenee
Brooks	Forsythe	Marriott
Broomfield	Fountain	Martin
Brown, Mich.	Frenzel	Mathis
Brown, Ohio	Gammage	Michel
Broyhill	Gilman	Milford
Buchanan	Goldwater	Miller, Ohio
Burgener	Goodling	Mitchell, N.Y.
Burleson, Tex.	Gradison	Moliohan
Butler	Grassley	Montgomery
Carter	Gudger	Moore
Cederberg	Hall	Moorhead, Calif.
Chappell	Hammer-schmidt	Mottl
Clausen, Don H.	Harsha	Murphy, N.Y.
Cleveland	Heckler	Myers, Gary
Cohen	Hightower	Myers, John
Coleman	Hillis	Nedzi
Collins, Tex.	Holt	Nichols
Conable	Horton	O'Brien
Conte	Hubbard	Poage
Corcoran	Hyde	Pritchard
Coughlin	Ichord	Pursell
Cunningham	Jeffords	Quayle
D'Amours	Jenkins	Regula
Daniel, Dan	Jones, N.C.	Rinaldo
Daniel, R. W.	Jones, Tenn.	Risenhoover
Davis	Kazen	Roberts
de la Garza	Kelly	Robinson
Derwinski	Kindness	Rousselot
Devine	Lagomarsino	Rudd
	Latta	Runnels
Ruppe	Stangeland	Wampler
Sarasin	Stanton	Watkins
Satterfield	Steiger	White
Sawyer	Stockman	Whitehurst
Schulze	Stratton	Whitley
Sebelius	Stump	Whitten
Shuster	Taylor	Wilson, Bob
Sikes	Treen	Wilson, C. H.
Slack	Trible	Winn
Smith, Nebr.	Vander Jagt	Wolff
Snyder	Walgren	Wydler
Spence	Walker	Wylie
Staggers	Walsh	Young, Fla.

NAYS—200

Addabbo	Garcia	Neal
Akaka	Gaydos	Nix
Anderson, Calif.	Gephardt	Nolan
Andrews, N.C.	Giaimo	Nowak
Annunzio	Ginn	Oakar
Ashley	Glickman	Oberstar
Aspin	Gonzalez	Obey
AuCoin	Gore	Ottinger
Baldus	Green	Panetta
Barnard	Hamilton	Patten
Baucus	Hanley	Patterson
Beard, R.I.	Hannaford	Pattison
Bedell	Harkin	Pease
Benjamin	Harrington	Pepper
Biaggi	Harris	Perkins
Bingham	Hefner	Pickle
Blouin	Heftel	Pike
Boggs	Holland	Preyer
Boland	Hollenbeck	Price
Bolling	Holtzman	Rahall
Bonior	Howard	Railsback
Bonker	Hughes	Reuss
Brademas	Ireland	Rodino
Breckinridge	Jacobs	Roe
Brodhead	Jenrette	Rogers
Brown, Calif.	Johnson, Calif.	Roncalio
Burke, Mass.	Jones, Okla.	Rose
Burlison, Mo.	Kastenmeier	Rosenthal
Burton, John	Keys	Rostenkowski
Burton, Phillip	Kildee	Roybal
Carney	Kostmayer	Russo
Carr	Krebs	Ryan
Cavanaugh	LaFalce	Santini
Chisholm	Le Fante	Scheuer
Clay	Lederer	Schroeder
Collins, Ill.	Leggett	Seiberling
Conyers	Levitas	Sharp
Corman	Lloyd, Calif.	Simon
Cornell	Long, La.	Skelton
Cornwell	Long, Md.	Smith, Iowa
Cotter	Lundine	Solarz
Danielson	McCloskey	Spellman
Delaney	McFall	St Germain
Dellums	McHugh	Stark
Derrick	Maguire	Steed
Dicks	Mahon	Steers
Dodd	Mann	Stokes
Downey	Markey	Studds
Early	Marks	Thompson
Eckhardt	Mattox	Traxler
Edgar	Mazzoli	Tucker
Edwards, Calif.	Meeds	Udall
Eilberg	Metcalfe	Ullman
Evans, Colo.	Meyner	Van Deerlin
Evans, Ga.	Mikulski	Vanik
Fascell	Mineta	Vento
Fenwick	Minish	Volkmer
Findley	Mitchell, Md.	Waxman
Fisher	Moakley	Weaver
Fithian	Moffett	Weiss
Flood	Moorhead, Pa.	Whalen
Florio	Moss	Wilson, Tex.
Foley	Murphy, Ill.	Wirth
Ford, Mich.	Murphy, Pa.	Wright
Ford, Tenn.	Murtha	Yates
Fowler	Myers, Michael	Young, Mo.
	Natcher	Zablocki

NOT VOTING—56

Abdnor	Fuqua	Rangel
Ammerman	Gibbons	Rhodes
Armstrong	Guyer	Richmond
Badham	Hagedorn	Rooney
Bellenson	Hansen	Shipley
Burke, Calif.	Hawkins	Sisk
Burke, Fla.	Huckaby	Skubitz
Byron	Johnson, Colo.	Symms
Caputo	Jordan	Teague
Clawson, Del	Kasten	Thone
Cochran	Kemp	Thornton
Crane	Krueger	Tsongas
Dent	Lehman	Waggonner
Diggs	Mikva	Wiggins
Drinan	Miller, Calif.	Yatron
Duncan, Oreg.	Pettis	Young, Alaska
Fary	Pressler	Young, Tex.
Fraser	Quie	Zeferetti
Frey	Quillen	

The Clerk announced the following pairs:

On this vote:

Mr. Waggonner for, with Mr. Richmond against.

Mr. Teague for, with Mr. Zeferetti against.

Mr. Kasten for, with Mrs. Burke of California against.

Mr. Symms for, with Mr. Dent against.

Mr. Hagedorn for, with Mr. Diggs against.

Mr. Fuqua for, with Mr. Yatron against.

Mr. Guyer for, with Mr. Drinan against.

Mr. Kemp for, with Mr. Hawkins against.

Mr. Rhodes for, with Mr. Mikva against.

Mr. Badham for, with Mr. Miller of California against.

Mr. Hansen for, with Mr. Fary against.

Until further notice:

Mr. Byron with Mr. Abdnor.

Mr. Duncan of Oregon with Mr. Burke of Florida.

Mr. Fraser with Mr. Cochran of Mississippi.

Mr. Gibbons with Mr. Johnson of Colorado.

Mr. Ammerman with Mr. Caputo.

Mr. Huckaby with Mr. Armstrong.

Miss Jordan with Mr. Krueger.

Mr. Lehman with Mrs. Pettis.

Mr. Rangel with Mr. Del Clawson.

Mr. Rooney with Mr. Thone.

Mr. Shipley with Mr. Crane.

Mr. Sisk with Mr. Pressler.

Mr. Thornton with Mr. Wiggins.

Mr. Tsongas with Mr. Young of Alaska.

Mr. Frey with Mr. Quie.

Mr. Skubitz with Mr. Quillen.

So the amendment was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. EVANS of Colorado). The Clerk will report the conforming amendments upon which a separate vote has been demanded.

The Clerk read as follows:

Conforming amendments: Page 50, strike out line 22 and all that follows down through line 13 and insert in lieu thereof: ".".

Page 51, line 17, strike out ", except that an" and all that follows down through line 23 and insert in lieu thereof: ".".

The SPEAKER pro tempore. The question is on the conforming amendments.

The conforming amendments were rejected.

The SPEAKER pro tempore. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. M'CLORY

Mr. McCLORY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. McCLORY. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. McCLORY moves to recommit the bill, H.R. 7308, to the Select Committee on Intelligence with the instructions to report back the same to the House forthwith with the following amendments:

Page 39, strike out line 10 and all that follows down through line 17 and insert in lieu thereof: "at a foreign power as defined in section 101(a) (1), (2), or (3); and".

Page 47, strike out line 4 and all that follows down through line 14, and redesignate subsections (c) and (d) accordingly.

Page 50, strike out line 22 and all that follows down through line 6 on page 51, and redesignate subsections (d) through (g) accordingly.

Page 51, line 9, strike out ", except that" and all that follows down through line 13 and insert in lieu thereof ".".

Mr. McCLORY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. McCLORY) is recognized for 5 minutes in support of his motion to recommit.

Mr. McCLORY. Mr. Speaker, this motion to recommit with instructions would impose much narrower restrictions with respect to the elimination of a warrant requirement. In other words, it is narrower than the so-called McClory amendment which would have eliminated all foreign agents and all foreign powers from the requirement that the intelligence agencies would have to go to court to get a warrant.

This would merely eliminate the warrant requirement with regard to a foreign government or a component thereof—an embassy, for instance—or to a faction of a foreign government—the Eritrean Liberation Front, or the PLO—or an entity openly directed and controlled by a foreign government—such as Aeroflot—or some agency like that is operating here in our country but is owned and controlled by a foreign government. In other words, it seems to me for us to impose upon ourselves a requirement that we go and get a judicial warrant to engage in electronic surveillance of the Soviet Embassy means that we would be required to get a warrant if we wanted to be there with radio interception, or television surveillance, or whatever it might be, and that just seems to me to be completely absurd.

When I talk to individuals about this, they wonder what in the world we are getting ourselves into that we want our intelligence agencies to go to a court and get a judge to decide whether or not we should have electronic surveillance of foreign powers and foreign agents in power such as this.

When I say "foreign agents," I mean foreign spies who might be in this country, and yet we could not engage in electronic surveillance of that foreign spy under this legislation unless we first go to a court and get a court order. To what absurd length must we go in order to cleanse ourselves of some abuses that took place some years ago? The evidence before our committee is without question that there have been no abuses, no abuses of any rights of any American, during the period that we have had executive guidelines. The amendment embodied in the motion to recommit was intended to be offered by our colleague, the gentleman from Louisiana (Mr. WAGGONNER), if he were here. I know that the gentleman from Texas (Mr. HALL), is also supporting this position, and I hope that the Members will vote favorably on this motion to recommit.

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

Mr. BOLAND. Mr. Speaker, I rise in opposition to the motion to recommit with instructions.

Mr. Speaker, I cannot say with surety that the gentleman from Louisiana (Mr. WAGGONNER) would be offering this amendment or would propose it in the motion to recommit. The gentleman from Illinois (Mr. McCLORY) would probably have better knowledge of that than I. But be that as it may, the same arguments that prevailed with respect to the McClory amendment prevail in this, too. So, Mr. Speaker, without delaying the time of this House—they have been awfully patient—this motion to recommit ought to be rejected, just as the McClory amendment was rejected in the separate vote.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. McCLORY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 164, nays 207, not voting 61, as follows:

[Roll No. 736]

YEAS—164

Ambro	Dingell	Lagomarsino
Anderson, Ill.	Dornan	Latta
Andrews, N.C.	Duncan, Tenn.	Leach
Andrews, N. Dak.	Edwards, Ala.	Lent
Archer	Edwards, Okla.	Livingston
Ashbrook	Emery	Lloyd, Tenn.
Bafalis	English	Lott
Bauman	Erlenborn	Lujan
Beard, Tenn.	Ertel	McClory
Bennett	Evans, Del.	McCormack
Bevill	Evans, Ind.	McDade
Bowen	Fish	McDonald
Breaux	Flippo	McEwen
Brinkley	Flowers	McKinney
Broomfield	Flynt	Madigan
Brown, Mich.	Forsythe	Marriott
Brown, Ohio	Fountain	Martin
Broyhill	Frenzel	Mathis
Buchanan	Gammage	Michel
Burgener	Gilman	Milford
Burleson, Tex.	Goldwater	Miller, Ohio
Butler	Gonzalez	Mitchell, N.Y.
Carter	Goodling	Mollohan
Cederberg	Gradison	Montgomery
Chappell	Grassley	Moore
Clausen, Don H.	Gudger	Moorhead, Calif.
Cleveland	Hall	Myers, Gary
Cohen	Hammer-schmidt	Myers, John
Coleman	Harsha	Nedzi
Collins, Tex.	Heckler	Nichols
Conable	Hefner	O'Brien
Conte	Hightower	Poage
Corcoran	Hillis	Pritchard
Coughlin	Holt	Quayle
Cunningham	Horton	Regula
Daniel, Dan	Hyde	Rinaldo
Daniel, R. W.	Ichord	Risenhoover
Davis	Jeffords	Roberts
de la Garza	Jenkins	Robinson
Derwinski	Jenrette	Rousselot
Devine	Kazen	Rudd
Dickinson	Kelly	Runnels
	Kindness	Ruppe
Sarasin	Stanton	Watkins
Satterfield	Steiger	White
Sawyer	Stockman	Whitehurst
Schulze	Stratton	Whitley
Sebelius	Stump	Wilson, Bob
Shuster	Taylor	Wilson, C. H.
Sikes	Treen	Wilson, Tex.
Skubitz	Trible	Winn
Smith, Nebr.	Vander Jagt	Wolff
Snyder	Walker	Wydler
Spence	Walsh	Wylie
Stangeland	Wampler	Young, Fla.

NAYS—207

Addabbo	Garcia	Nix
Akaka	Gaydos	Nolan
Alexander	Gephardt	Nowak
Anderson, Calif.	Giaimo	Oakar
Annunzio	Ginn	Oberstar
Applegate	Glickman	Obey
Ashley	Gore	Ottinger
Aspin	Green	Panetta
AuCoin	Hamilton	Patten
Baldus	Hanley	Patterson
Barnard	Hannaford	Pattison
Baucus	Harkin	Pease
Beard, R.I.	Harrington	Pepper
Bedell	Harris	Perkins
Benjamin	Heftel	Pickle
Biaggi	Holland	Pike
Bingham	Hollenbeck	Preyer
Blanchard	Holtzman	Price
Blouin	Howard	Pursell
Boggs	Hubbard	Rahall
Boland	Hughes	Railsback
Bolling	Ireland	Reuss
Bonior	Jacobs	Roe
Bonker	Johnson, Calif.	Rogers
Brademas	Jones, N.C.	Roncalio
Breckinridge	Jones, Okla.	Rose
Brodhead	Jones, Tenn.	Rosenthal
Brown, Calif.	Kastenmeier	Rostenkowski
Burke, Mass.	Keys	Roybal
Burlison, Mo.	Kildee	Russo
Burton, John	Kostmayer	Ryan
Burton, Phillip	Krebs	Santini
Carney	LaFalce	Scheuer
Carr	Lederer	Schroeder
Cavanaugh	Le Fante	Seiberling
Chisholm	Leggett	Sharp
Clay	Levitas	Simon
Collins, Ill.	Lloyd, Calif.	Skelton
Conyers	Long, La.	Slack
Corman	Long, Md.	Smith, Iowa
Cornell	Lundine	Solarz
Cornwell	McCloskey	Spellman
Cotter	McFall	St Germain
D'Amours	McHugh	Staggers
Danielson	McKay	Stark
Delaney	Maguire	Steed
Dellums	Mahon	Steers
Derrick	Mann	Stokes
Dicks	Markey	Studds
Diggs	Marks	Thompson
Dodd	Mattox	Traxler
Downey	Mazzoli	Tucker
Early	Meeds	Udall
Eckhardt	Metcalfe	Ullman
Edgar	Meyner	Van Deerlin
Edwards, Calif.	Mikulski	Vanik
Ellberg	Mineta	Vento
Evans, Colo.	Minish	Volkmer
Evans, Ga.	Mitchell, Md.	Walgren
Fascell	Moffett	Waxman
Fenwick	Moorhead, Pa.	Weaver
Findley	Moss	Weiss
Fisher	Mottl	Whalen
Fithian	Murphy, Ill.	Wirth
Flood	Murphy, N.Y.	Wright
Florio	Murphy, Pa.	Yates
Ford, Mich.	Murtha	Young, Mo.
Ford, Tenn.	Myers, Michael	Zablocki
Fowler	Natcher	
	Neal	

NOT VOTING—61

Abdnor	Gibbons	Rangel
Ammerman	Guyer	Rhodes
Armstrong	Hagedorn	Richmond
Badham	Hansen	Rodino
Bellenson	Hawkins	Rooney
Brooks	Huckaby	Shipley
Burke, Calif.	Johnson, Colo.	Sisk
Burke, Fla.	Jordan	Symms
Byron	Kasten	Teague
Caputo	Kemp	Thone
Clawson, Del	Krueger	Thornton
Cochran	Lehman	Tsongas
Crane	Luken	Waggonner
Dent	Marlenee	Whitten
Drinan	Mikva	Wiggins
Duncan, Oreg.	Miller, Calif.	Yatron
Fary	Moakley	Young, Alaska
Foley	Pettis	Young, Tex.
Fraser	Pressler	Zeferetti
Frey	Quie	
Fuqua	Quillen	

The Clerk announced the following pairs:

On this vote:

Mr. Waggonner for, with Mr. Richmond against.
Mr. Teague for, with Mr. Zeferetti against.
Mr. Kasten for, with Mr. Dent against.
Mr. Symms for, with Mr. Drinan against.
Mr. Hagedorn for, with Mr. Hawkins against.
Mr. Guyer for, with Mr. Fary against.
Mr. Kemp for, with Mr. Rangel against.
Mr. Rhodes for, with Mrs. Burke of California against.
Mr. Badham for, with Mr. Mikva against.
Mr. Hansen for, with Mr. Moakley against.
Mr. Abdnor for, with Mr. Yatron against.

Until further notice:

Mr. Beilenson with Mr. Armstrong.
Mr. Brooks with Mr. Burke of Florida.
Mr. Huckaby with Mr. Caputo.
Mr. Sisk with Mrs. Pettis.
Mr. Shipley with Mr. Frey.
Mr. Rooney with Mr. Del Clawson.
Mr. Rodino with Mr. Pressler.
Miss Jordan with Mr. Johnson of Colorado.
Mr. Krueger with Mr. Thone.
Mr. Whitten with Mr. Young of Alaska.
Mr. Ammerman with Mr. Cochran of Mississippi.
Mr. Byron with Mr. Luken.
Mr. Duncan of Oregon with Mr. Wiggins.
Mr. Foley with Mr. Crane.
Mr. Fraser with Mr. Marlenee.
Mr. Gibbons with Mr. Quie.
Mr. Tsongas with Mr. Thornton.
Mr. Lehman with Mr. Quillen.
Mr. Fuqua with Mr. Miller of California.

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 246, nays 128, not voting 58, as follows:

[Roll No. 737]

YEAS—246

Addabbo	Burton, John	Evans, Ga.
Akaka	Burton, Phillip	Evans, Ind.
Alexander	Carney	Fascell
Ambro	Carr	Fenwick
Anderson, Calif.	Cavanaugh	Findley
Anderson, Ill.	Chisholm	Fisher
Annunzio	Clay	Fithian
Applegate	Cleveland	Flood
Ashley	Cohen	Florio
Aspin	Collins, Ill.	Foley
AuCoin	Conte	Ford, Mich.
Baldus	Conyers	Ford, Tenn.
Barnard	Corman	Fowler
Baucus	Cornell	Gammage
Beard, R.I.	Cornwell	Garcia
Bedell	Cotter	Gaydos
Benjamin	D'Amours	Gephardt
Biaggi	Danielson	Giaimo
Bingham	de la Garza	Gilman
Blanchard	Delaney	Ginn
Blouin	Dellums	Glickman
Boggs	Derrick	Gore
Boland	Derwinski	Green
Bolling	Dicks	Gudger
Bonior	Diggs	Hall
Bonker	Dingell	Hamilton
Brademas	Dodd	Hanley
Brinkley	Downey	Hannaford
Brooks	Early	Harkin
Broomfield	Eckhardt	Harrington
Brown, Calif.	Edgar	Harris
Burke, Mass.	Edwards, Calif.	Heckler
Burlison, Mo.	Eilberg	Hefner
	Evans, Colo.	Heftel
Holland	Meyner	Roybal
Hollenbeck	Mikulski	Russo
Horton	Mineta	Ryan
Howard	Minish	Santini
Hubbard	Mitchell, Md.	Sarasin
Hughes	Moakley	Sawyer
Ireland	Moffett	Scheuer
Jacobs	Montgomery	Schroeder
Jeffords	Moorhead, Pa.	Seiberling
Jenkins	Mottl	Sharp
Johnson, Calif.	Murphy, Ill.	Simon
Jones, N.C.	Murphy, N.Y.	Skelton
Jones, Okla.	Murphy, Pa.	Smith, Iowa
Jones, Tenn.	Murtha	Solarz
Kastenmeier	Myers, Michael	Spellman
Kazen	Natcher	St Germain
Keys	Neal	Staggers
Kildee	Nix	Stanton
Kostmayer	Nolan	Stark
Krebs	Nowak	Steed
LaFalce	Oberstar	Steers
Leach	Obey	Stokes
Lederer	Ottinger	Studds
Le Fante	Panetta	Thompson
Leggett	Patten	Traxler
Levitas	Patterson	Tucker
Lloyd, Calif.	Pattison	Udall
Long, La.	Pease	Ullman
Long, Md.	Pepper	Van Deerlin
Luken	Perkins	Vanik
Lundine	Pickle	Vento
McCloskey	Pike	Volkmer
McDade	Preyer	Walgren
McFall	Price	Waxman
McHugh	Pritchard	Weaver
McKay	Pursell	Weiss
McKinney	Quayle	Whalen
Madigan	Rahall	White
Maguire	Railsback	Whitten
Mahon	Reuss	Wilson, Tex.
Mann	Rinaldo	Wirth
Markey	Risenhoover	Wolff
Marks	Roberts	Wright
Marlenee	Roe	Wydler
Mathis	Rogers	Yates
Mattox	Roncalio	Young, Mo.
Mazzoli	Rose	Zablocki
Meeds	Rosenthal	
Metcalfe	Rostenkowski	

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Andrews, N.C.	Fish	Myers, John
Andrews, N. Dak.	Flippo	Nedzi
Archer	Flowers	Nichols
Ashbrook	Flynt	O'Brien
Bafalis	Forsythe	Oakar
Bauman	Fountain	Poage
Beard, Tenn.	Frenzel	Regula
Bennett	Goldwater	Robinson
Bevill	Gonzalez	Rousselot
Bowen	Goodling	Rudd
Breaux	Gradison	Runnels
Brodhead	Grassley	Ruppe
Brown, Mich.	Hammer-schmidt	Satterfield
Brown, Ohio	Harsha	Schulze
Broyhill	Hightower	Sebelius
Buchanan	Hillis	Shuster
Burgener	Holt	Sikes
Burleson, Tex.	Holtzman	Skubitz
Butler	Hyde	Slack
Carter	Ichord	Smith, Nebr.
Cederberg	Jenrette	Snyder
Chappell	Kelly	Spence
Clausen, Don H.	Kindness	Stangeland
Coleman	Lagomarsino	Steiger
Collins, Tex.	Latta	Stockman
Conable	Lent	Stratton
Corcoran	Livingston	Stump
Coughlin	Lloyd, Tenn.	Taylor
Cunningham	Lott	Treen
Daniel, Dan	Lujan	Trible
Daniel, R. W.	McClory	Vander Jagt
Davis	McCormack	Walker
Devine	McDonald	Walsh
Dickinson	McEwen	Wampler
Dornan	Marriott	Watkins
Duncan, Tenn.	Martin	Whitehurst
Edwards, Ala.	Michel	Whitley
Edwards, Okla.	Miller, Ohio	Wilson, Bob
Emery	Mitchell, N.Y.	Wilson, C. H.
English	Mollohan	Winn
Erlenborn	Moore	Wylie
Ertel	Moorhead, Calif.	Young, Fla.
Evans, Del.	Myers, Gary	

NOT VOTING—58

Abdnor	Breckinridge	Clawson, Del
Ammerman	Burke, Calif.	Cochran
Armstrong	Burke, Fla.	Crane
Badham	Byron	Dent
Beilenson	Caputo	Drinan
Duncan, Oreg.	Krueger	Shipley
Fary	Lehman	Sisk
Fraser	Mikva	Symms
Frey	Milford	Teague
Fuqua	Miller, Calif.	Thone
Gibbons	Moss	Thornton
Guyer	Pettis	Tsongas
Hagedorn	Pressler	Waggonner
Hansen	Quie	Wiggins
Hawkins	Quillen	Yatron
Huckaby	Rangel	Young, Alaska
Johnson, Colo.	Rhodes	Young, Tex.
Jordan	Richmond	Zeferetti
Kasten	Rodino	
Kemp	Rooney	

The Clerk announced the following pairs:

On this vote:

Mr. Richmond for, with Mr. Drinan against.
Mr. Zeferetti for, with Mr. Kasten against.
Mr. Fary for, with Mr. Symms against.
Mr. Rooney for, with Mr. Abdnor against.
Mr. Fuqua for, with Mr. Hansen against.
Mrs. Burke of California for, with Mr. Hagedorn against.
Mr. Rangel for, with Mr. Rhodes against.
Mr. Mikva for, with Mr. Del Clawson against.
Mr. Yatron for, with Mr. Crane against.
Mr. Rodino for, with Mr. Kemp against.
Mr. Dent for, with Mr. Guyer against.
Mr. Hawkins for, with Mr. Teague against.
Mr. Miller of California for, with Mr. Waggonner against.
Mr. Lehman for, with Mr. Wiggins against.
Mr. Shipley for, with Mr. Badham against.

Until further notice:

Mr. Ammerman with Mr. Armstrong.
Mr. Beilenson with Mrs. Pettis.
Mr. Gibbons with Mr. Pressler.
Mr. Sisk with Mr. Thone.
Mr. Tsongas with Mr. Burke of Florida.
Mr. Krueger with Mr. Frey.
Miss Jordan with Mr. Quie.
Mr. Huckaby with Mr. Quillen.
Mr. Breckinridge with Mr. Caputo.
Mr. Byron with Mr. Duncan of Oregon.
Mr. Milford with Mr. Thornton.
Mr. Moss with Mr. Young of Alaska.

Mr. BROWN of Michigan changed his vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to authorize electronic surveillance to obtain foreign intelligence information.".

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. FOLEY). Pursuant to the provisions of House Resolution 1266, the Committee on the Judiciary is discharged from the further consideration of the Senate bill (S. 1566) 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 Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. BOLAND

Mr. BOLAND. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOLAND moves to strike out all after the enacting clause of the Senate bill S. 1566 and to insert in lieu thereof the provisions of H.R. 7308, as passed by the House, as follows:

That this Act may be cited as the "Foreign Intelligence Surveillance Act of 1978".

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Sec. 104. Application for an order.
Sec. 105. Issuance of an order.
Sec. 106. Use of information.
Sec. 107. Report of electronic surveillance.
Sec. 108. Congressional oversight.
Sec. 109. Penalties.
Sec. 110. Civil liability.

TITLE II—CONFORMING AMENDMENTS

Sec. 201. Amendments to chapter 119 of title 18, United States Code.

TITLE III—EFFECTIVE DATE

Sec. 301. Effective date.

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 by 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 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 or property 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 srveillance 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, uless 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.

(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.

AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

SEC. 102. (a)(1) Notwithstanding any other law, the President, through the At-

torney 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 a United States district 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 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.

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.

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 and 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 effected;

(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 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 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 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 determinations 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 applications for electronic surveillance for foreign intelligence information;

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

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

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *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 erroneous 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 unobtrusively and 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.

(2) 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 having jurisdiction under 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, hearings, 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 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.

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 officiers 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 disclousre 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, departent, officer, agency, regulatory body, or other authority of the United States, 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 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 be 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 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 Court shall, notwithstanding any other law, if the Attorney General files an affidavit under oath with the 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 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 United States court of appeals an affidavit under oath that 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 or 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 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 court pursuant to subsection (f) or the 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 court pursuant to subsection (f) or the 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 district court or 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 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 the surveillance; and

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

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

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. (a) 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.

(b) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate may periodically review the information provided under subsection (a). If either such committee determines that an electronic surveillance of a United States person under this title has produced no foreign intelligence information and that the disclosure of the fact of such surveillance to such United Stataes person would not harm the national security, such committee shall inform such person of the fact of such surveillance and that no foreign intelligence information was derived from such surveillance.

PENALTIES

SEC. 109. (a) OFFENSE.—A person is guilty of an offense if he intentionally engaged in electronic surveillance under color of law except as authorized by statute.

(b) DEFENSE.—It is a defense to a prosecution under subsection (a) 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 seach warrant or court order of a court of competent jurisdiction.

(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 violataion 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.

AUTHORIZATION DURING TIME OF WAR

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 up to one year during a period of war declared by the Congress.

TITLE II—CONFORMING AMENDMENTS

AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

SEC. 201. Chapter 119 of title 18, United States Code, is amended as follows:

(a) Section 2511(2)(a)(ii) is amended to read as follows:

"(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

"(A) a court order directing such assistance signed by the authorizing judge, or

"(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the

person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.".

(b) Section 2511(2) is amended by adding at the end thereof the following new provisions:

"(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

"(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive statutory means by which electronic surveillance, as defined in section 101 of such Act, and the interpretation of domestic wire and oral communications may be conducted.".

(c) Section 2511(3) is repealed.

(d) Section 2518(1) is amended by inserting "under this chapter" after "communication".

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

(f) Section 2518(9) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after "communication".

(g) Section 2518(10) is amended by striking out "intercepted" and inserting "intercepted pursuant to this chapter" after the first appearance of "communication".

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

TITLE III—EFFECTIVE DATE

EFFECTIVE DATE

SEC. 301. The provisions of this Act and the amendments made hereby shall become effective upon the date of enactment of this Act, except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act within ninety days following such date of enactment.

Amend the title so as to read: "An act to authorize electronic surveillance to obtain foreign intelligence information.".

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to authorize electronic surveillance to obtain foreign intelligence information.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 7308) was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 7308

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that the Clerk may be authorized to make any necessary corrections in section numbers, cross references, and punctuation in the engrossment of the bill, H.R. 7308.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 6536, DISTRICT OF COLUMBIA RETIREMENT REFORM ACT

Mr. DIGGS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6536) to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

Mr. DERWINSKI. Mr. Speaker, reserving the right to object, may I ask the gentleman from Michigan if this procedure has been discussed with the ranking minority member of the committee.

Mr. DIGGS. If the gentleman will yield, it has, and I have the recommended conferees from the minority side.

Mr. DERWINSKI. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan? The Chair hears none, and, without objection, appoints the following conferees: Messrs. DIGGS, DELLUMS, FAUNTROY, MAZZOLI, MCKINNEY, and WHALEN.

There was no objection.

APPOINTMENT OF CONFEREES ON HOUSE CONCURRENT RESOLUTION 683, REVISING CONGRESSIONAL BUDGET FOR THE U.S. GOVERNMENT FOR FISCAL YEAR 1979

Mr. GIAIMO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the concurrent resolution (H. Con. Res. 683) revising the congressional budget for the U.S. Government for the fiscal year 1979, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut? The Chair hears none, and, without objection, appoints the following conferees: Messrs. GIAIMO, WRIGHT, LEGGETT, MITCHELL of Maryland, BURLESON of Texas, DERRICK, OBEY, SIMON, MINETA, LATTA, CONABLE, DUNCAN of Oregon, and REGULA.

There was no objection.

REQUEST TO CONCUR IN SENATE AMENDMENTS TO H.R. 1337, AMENDING THE INTERNAL REVENUE CODE OF 1954 WITH RESPECT TO EXCISE TAX ON CERTAIN TRUCKS, BUSES, TRACTORS, ET CETERA

Mr. CORMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1337) to amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera, with Senate amendments thereto, concur in the Senate amendment to the title of the bill, and concur in the Senate amendment to the text of the bill with amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. EXCISE TAX ON CERTAIN TRUCKS, BUSES, TRACTORS, ETC.

(a) IN GENERAL.—Paragraph (1) of section 4216(b) of the Internal Revenue Code of 1954 (relating to constructive sale price) is amended by inserting after the second sentence thereof the following new sentence: "In the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost)".

(b) CONFORMING AMENDMENT.—The second sentence of paragraph (1) of such section 4216(b) is amended by inserting "(other than an article the sale of which is taxable under section 4061(a))" after "sold at retail".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer or producer on or after the first day of the first calendar quarter beginning 30 days or more after the date of enactment of this Act.

SEC. 2. HOME PRODUCTION OF BEER AND WINE.

(a) EXEMPTION FROM TAX ON WINE.—Section 5042(a)(2) of the Internal Revenue Code of 1954 (relating to production of wine for personal consumption) is amended to read as follows:

"(2) WINE FOR PERSONAL OR FAMILY USE.—Subject to regulations prescribed by the Secretary—

"(A) EXEMPTION.—Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

"(B) LIMITATION.—The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

"(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(ii) 100 gallons per calendar year if there is only 1 adult in such household.

"(C) ADULTS.—For purposes of this paragraph, the term 'adult' means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which wine may be sold to individuals, whichever is greater.

(b) EXEMPTION FROM TAX ON BEER.—

(1) IN GENERAL.—Section 5053 of such Code (relating to exemptions from excise tax on beer) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new section:

"(e) BEER FOR PERSONAL OR FAMILY USE.—

Subject to regulations prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed—

"(1) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(2) 100 gallons per calendar year if there is only 1 adult in such household.

For purposes of this subsection, the term 'adult' means an individual who has attained 18 years of age or the minimum age, if any, established by law applicable in the locality in which the household is situated for individuals to whom beer may be sold, whichever is greater."

(2) ILLEGALLY PRODUCED BEER.—

(A) Section 5051 of such Code (relating to imposition and rate of tax) is amended by adding at the end thereof the following new subsection:

"(c) ILLEGALLY PRODUCED BEER.—The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless—

"(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

"(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).".

(B) Section 5054(a)(3) of such Code (relating to illegally produced beer) is amended to read as follows:

"(3) ILLEGALLY PRODUCED BEER.—The tax on any beer produced in the United States shall be due and payable immediately upon production unless—

"(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

"(B) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).".

(3) DEFINITION OF BREWER.—Section 5092 of such Code (defining brewer) is amended to read as follows:

"SEC. 5092. DEFINITION OF BREWER.

"Every person who brews beer (except a person who produces only beer exempt from tax under section 5053(e)) and every person who produces beer for sale shall be deemed to be a brewer.".

(4) EXEMPTION FROM CERTAIN PROVISIONS RELATING TO DISTILLING MATERIALS.—Section 5222(a)(2)(C) of such Code (relating to certain exemptions) is amended by striking out "; or" and inserting in lieu thereof "or 5053(e); or".

(5) PENALTY FOR UNLAWFUL PRODUCTION OF BEER.—

(A) Section 5674 of such Code (relating to penalty for unlawful removal of beer) is amended to read as follows:

"SEC. 5674. PENALTY FOR UNLAWFUL PRODUCTION OR REMOVAL OF BEER.

"(a) UNLAWFUL PRODUCTION.—Any person who brews beers or produces beer shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, unless such beer is brewed or produced in a brewery qualified under subchapter G or such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

"(b) UNLAWFUL REMOVAL.—Any brewer or other person who removes or in any way aids in the removal from any brewery of beer without complying with the provisions of this chapter or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.".

(B) The item relating to section 5674 in the table or sections for part III of subchapter J of chapter 51 of such Code is amended to read as follows:

"Sec. 5674. Penalty for unlawful production or removal of beer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act.

SEC. 3. REFUNDS TO BE MADE TO AERIAL APPLICATORS IN CERTAIN CASES.

(a) ENTITLEMENT OF AERIAL APPLICATORS TO REFUND OF GASOLINE TAX IN CERTAIN CASES.—Subsection (c) of section 6420 of the Internal Revenue Code of 1954 (defining use on a farm for farming purposes) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) CERTAIN FARMING USE OTHER THAN BY OWNER, ETC.—In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

"(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the gasoline, except that

"(B) if the person so using the gasoline is an aerial applicator who is the ultimate purchaser of the gasoline and the person described in subparagraph (A) waives (at such time and in such form and manner as the Secretary shall prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial applicator shall be treated as having used such gasoline on a farm for farming purposes."

(b) ENTITLEMENT OF AERIAL APPLICATORS TO REFUND OF SPECIAL FUELS TAX IN CERTAIN CASES.—The second sentence of subsection (c) of section 6427 of such Code (relating to use for farming purposes) is amended to read as follows: "For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, the rules of paragraph (4) of section 6420(c) shall be applied (except that 'liquid taxable under section 4041' shall be substituted for 'gasoline' each place it appears in such paragraph (4).)"

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 6420(c)(3) of such Code is amended by striking out "except that" and all that follows down through the semicolon at the end of such subparagraph (A).

(d) EFFECTIVE DATE.—The amendments made by the first section of this Act shall take effect on the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act.

SEC. 4. PARTIAL ROLLOVERS OF LUMP SUM DISTRIBUTIONS.

(a) PARTIAL ROLLOVER PERMITTED.—Paragraph (5) of section 402(a) of the Internal Revenue Code of 1954 (relating to rollover amounts) is amended to read as follows:

"(5) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—If the balance to the credit of an employee in a qualified trust is paid to him within his taxable year in a termination or discontinuance distribution or in a lump sum distribution and he transfers all or a portion of the total taxable amount (as defined in subsection (e)(4)(D)) of the distribution to an eligible rollover source, then the amount transferred shall not be included in gross income.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFIED TRUST.—The term 'qualified trust' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

"(ii) TERMINATION OR DISCONTINUANCE DISTRIBUTION.—The term 'termination or discontinuance distribution' means a distribution on account of a termination of the plan of which a qualified trust is a part, or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under the plan.

"(iii) LUMP SUM DISTRIBUTIONS.—The term 'lump sum distribution' means a distribution described in subparagraph (A) of subsection (e)(4) (determined without regard to subparagraph (B) of that subsection).

"(iv) ELIGIBLE ROLLOVER SOURCE.—The term 'eligible rollover source' means—

"(I) an individual retirement account described in section 408(a),

"(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

"(III) a retirement bond described in section 409,

"(IV) a qualified trust, or

"(V) an annuity plan described in section 403(a).

"(C) SPECIAL RULES.—

"(i) TRANSFER TREATED AS ROLLOVER CONTRIBUTIONS UNDER SECTION 408.—A transfer described in subparagraph (A) to an eligible rollover source described in subclause (I), (II), or (III) of subparagraph (B)(iv) shall be treated as a rollover contribution as described in section 408(d)(3).

"(ii) SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—Qualified rollover sources described in subclause (IV) or (V) of subparagraph (B) shall not be treated as qualified rollover sources for transfers of a distribution if any part of the distribution is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

"(iii) PROPERTY ROLLED OVER MUST BE THE PROPERTY RECEIVED.—Subparagraph (A) shall not apply to a transfer of property other than money unless the property transferred is the property which was received in the distribution.

"(iv) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.".

(b) TAXATION OF PORTION EXCLUDED FROM ROLLOVER.—Paragraph (6) of section 402(a) of such Code (relating to special rollover rules) is amended—

(1) by striking out "For purposes of paragraph (5)(A)(i)—" and inserting in lieu thereof "For purposes of paragraph (5)—", and

(2) by adding at the end thereof the following new subparagraph:

"(C) TAXATION OF NONROLLOVER PORTION.—If the total taxable amount of a distribution described in paragraph (5)(A) exceeds the amount transferred in a transfer described in such paragraph, then—

"(i) subsection (e) and section 62(11) shall not apply with respect to the distribution, and

"(ii) to the extent that the total taxable amount of such distribution exceeds the amount transferred, the excess shall be treated as ordinary income (or loss)."

(c) SPECIAL RULE.—For the purpose of applying the amendment made by subsection (a) of this section in the case of a taxpayer whose attempt to comply with the requirements of section 402(a)(5) of the Internal Revenue Code of 1954 (relating to rollover amounts) for a taxable year beginning before the date of enactment of this Act failed to meet the requirement of such section that all property received in a distribution be transferred, the provisions of such section (as amended by subsection (a)) shall be applied by treating any transfer of