more trouble, why do we not stop it there?

Mr. STENNIS. Mr. President, as a practical matter, I do not think we will have a quorum here beyond Wednesday.

Mr. BAKER. I promised the distinguished managers of this bill that, so far as I am concerned, I will do my dead level best to move this matter along, because I recognize the absolute necessity to finish it as soon as possible. I commend both of them for the good job they have done in bringing this matter to the Senate floor. I hope we can finish it next week.

Mr. STENNIS. That is my point—if we can finish this matter by Wednesday. Otherwise, there is no practical remedy. As I see it, we will not have a quorum.

Mr. ROBERT C. BYRD. I do not think there will be question about having a quorum through Wednesday.

As the distinguished minority leader has pointed out, Senators do have airline schedules to meet, and they have made their arrangements.

However, if the supplemental keeps the Senate around until the following week, we will stay on this measure until the supplemental is passed.

I hope that by having lengthy sessions on Monday and Tuesday—and Wednesday, if necessary—we can complete action on this bill. If we will all try hard to get time agreements on amendments as they come up, or on the overall bill, if possible, it will help.

Mr. TOWER. Mr. President, beyond time agreements, if I might inquire of the distinguished majority leader, will he do everything he can to convince Senators who have amendments that they should bring them up at the earliest opportunity? I do not want to be put in the position of handling a major procurement bill and have that bill put over until after the recess just because it was not convenient for someone to bring up an amendment he wanted to bring up that might not even be of major proportion.

Mr. STENNIS. That is correct.

Mr. TOWER. It might not even be of major proportion but something of interest to him and think that he can delay the final consideration of the bill to suit his own convenience.

I hope that notice could be served that Senators who have amendments to this bill will present them during the early hours of its consideration with the strong suggestion that if we reach late Wednesday afternoon and Senators are not forthcoming with amendments we will go to third reading.

I recognize that we cannot arbitrarily foreclose Senators but neither can we permit Senators to filibuster a bill simply by prevailing on the good nature of the leadership of the chairman or the ranking minority member to postpone consideration of an amendment.

Mr. ROBERT C. BYRD. The Senator is correct. I want to do everything I can possibly do to encourage Senators to do that.

Mr. BAKER. As will I, Mr. President.

Mr. STENNIS. I believe we are on the same track. If we let one Member go off and hold up everything until he gets back I will leave myself.

Mr. ROBERT C. BYRD. We will just have third reading. We cannot hold up this bill until after the July break just because a Member has an amendment and is not around to call it up.

Mr. STENNIS. We are on the same track.

Mr. BAKER. Mr. President, I congratulate both the Senator from Texas and the Senator from Mississippi for their concern about this measure. I pledge to both of them that in concert with the majority leader I will do my deadlevel best to encourage Members to offer their amendments, and Members on this side are on notice as of now that it will be an urgent request for them to do so, to offer their amendments at the earliest possible moment.

Mr. STENNIS. I thank both Senators very much.

Mr. ROBERT C. BYRD. I thank Mr. STENNIS and Mr. TOWER. And action will be taken on this side also to notify Members to be ready to call up their amendments.

Also I wish for my cloakroom determine on Monday, and I suggest that the minority cloakroom also determine as early as possible who has amendments and the nature of the amendments and how much time Senators who expect to call up those amendments would want on the amendment.

Mr. BAKER. Mr. President, I think that is a good suggestion. I will ask our cloakroom personnel to compile an inventory of amendments on this side and if the majority leader is agreeable maybe we could get together midday or early afternoon and explore the possibility of time agreements and a schedule of activities so that we can publish that to our colleagues as soon as possible.

Mr. ROBERT C. BYRD. That is very agreeable.

Mr. STENNIS. These amendments could be filed tonight or any time. I am not going to speak. The Senator from Texas is not going to speak. We can file amendments now.

Mr. TOWER. I just want to associate myself with what my distinguished chairman said earlier about this bill and what has been done with it. I, like he, would withhold my opening statement until Monday.

I commend him on putting together one of the best military procurement bills we have seen around here, I think in some time, and one that I think is of sufficient urgency that we should act on it with dispatch and that we should bring it to final passage virtually unscathed.

We are always willing to consider constructive amendments. This is simply an important bill.

Mr. STENNIS. I thank the Senator from Texas. He certainly had a big part putting this bill together.

Mr. WARNER. Mr. President, will the Senator yield a minute?

Mr. ROBERT C. BYRD. Mr. President, I do not suggest that Members lay down amendments tonight.

Mr. STENNIS. File them.

Mr. ROBERT C. BYRD. File them, yes, but I not suggest any Member call up an amendment tonight because there are Members around who have amendments and I would not——

Mr. TOWER. I do not think there is expectation of either of us that they be called up.

Mr. STENNIS. No.

INTELLIGENCE AUTHORIZATIONS, 1981

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the pending measure be temporarily laid aside for not to exceed 15 minutes and that the Senate proceed to the consideration of Calendar Order No. 920.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not, the purpose of the reservation is to advise the majority leader that this bill, which is the intelligence authorization bill, is cleared for passage on this side with the understanding that there is one amendment and that we are prepared at this time to waive the 3-day rule and proceed to its consideration.

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

The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2597) to authorize appropriations for fiscal year 1981 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services with amendments.

Mr. INOUYE. Mr. President, I ask that the committee amendments be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, the committee amendments are considered and agreed to en bloc and considered as original text.

The committee amendments agreed to en bloc are as follows:

On page 6, line 17, after "404." insert "(a)";

On page 8, beginning with line 17, insert the following:

(b) the amendment made by subsection (a) shall become effective October 1, 1980.

On page 10, beginning with line 23, insert the following:

SEC. 407. (a) Part III of subtitle A of title 10, United States Code, is amended by adding at the end thereof the following new chapter:

"Chapter 107.—GRANTING OF ADVANCED DEGREES AT DEPARTMENT OF DEFENSE SCHOOLS

"Sec.

"2151. Defense Intelligence School: degree.

"§ 2151. Defense Intelligence School: degree

"Under regulations prescribed by the Secretary of Defense, the Commandant of the Defense Intelligence School may, upon recommendation by the faculty of such school, confer the degree of master of science of strategic intelligence upon graduates of the school who have fulfilled the requirements for that degree.".

(b) The table of chapters at the beginning of subtitle A and of part III of subtitle A of such title are each amended by adding at the end thereof the following:

"107. Granting of Advanced Degrees at Department of Defense Schools ---------- 2151.".

Mr. INOUYE. Mr. President, I have the privilege and honor again this year of presenting legislation to authorize appropriations for U.S. intelligence activities. Annual authorization for intelligence is now established practice, and represents clear evidence that our constitutional responsibilities can be fulfilled in this very sensitive area, while at the same time maintaining the confidentiality necessary for an effective intelligence system.

The Intelligence Authorization Act for fiscal year 1981 authorizes appropriations for those programs and activities of the U.S. Government which serve the intelligence needs of our national policymakers. This includes the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency, the national intelligence activities of the Departments of Defense, State, Treasury, and Energy, the Federal Bureau of Investigation, and the Drug Enforcement Administration.

The committee regards the budget authorization process as a key aspect of effective congressional oversight of U.S. intelligence activities. Thus, again this year, the Budget Authorization Subcommittee conducted a detailed examination of the budget request, which carefully weighed foreign and defense policy needs against the substantive contribution and resource requirements of each of the major intelligence programs. During the course of this review the subcommittee conducted some 25 hours of hearings which included testimony by the Director of Central Intelligence, key Department of Defense officials, and each of the principal program managers.

The decade of the 1980's will place a greater burden than ever on the intelligence community to provide timely, relevant, and unambiguous information to U.S. policymakers. Recent events in the Near East, Africa, Southwest Asia, and Latin America provide clear evidence that events in these and other areas of the Third World are of growing and strategic importance to the United States. Expanding global issues of strategic significance, such as energy, nuclear proliferation, and international terrorism will also place increasing demands on the intelligence system.

At the same time, there is no indication of any lessening of the need to maintain a strong intelligence commitment against our principal adversaries. If anything, competition between the United States and its adversaries is likely to grow during the 1980's which will require an even greater commitment of intelligence resources to adequately cover the military, political, and economic aspects of this challenge.

In the near term, some shifting of focus will be required by the intelligence community in order to be responsive to the policymakers' diversity of interests. Over the longer term, however, a robustness in collection and analytic capabilities must be established if the U.S. intelligence system is to continue to be responsive to the broad range of policy issues with which it will be faced.

Complicating the challenges in the period ahead are the continually changing trends in the target environment with which the intelligence system must keep pace. This will require modernization of selected collection and processing systems that are rapidly becoming obsolete or inefficient.

We must also insure a healthy mix of intelligence capabilities and sufficient redundancy to guard against over-reliance on individual systems that are easily compromised, or may be lost unexpectedly. There are also serious shortages of foreign area specialists and linguists in the workforce, which must be redressed to adequately cope with future analytic needs.

During the past decade intelligence experienced a decline in real dollar terms, and a substantial retrenchment in manpower. Most of the major collection systems in being today are founded on late 1960's technology, and were placed in operation in the early 1970's. In large measure, the intelligence system has been sustaining itself from past capital investments. Manpower has been stretched extremely thin during this period, and important data bases have been allowed to erode. The committee is recommending major investments over the next 5 years to insure the availability of a new generation of systems that will enable the intelligence community to cope with policymakers' needs well into the 1990's. Added investments have also been recommended to increase manpower and expand automation techniques to aid in improving analytic capabilities throughout the community. These investments are considered essential to adequately respond to policymakers' needs in the coming years.

Because of the sensitivity of our intelligence operations, and the potential for compromise by our adversaries, I cannot discuss in open session the details of the committee's recommendations. These have been set forth in a classified committee report which has been made available to any Member under the provisions of Senate Resolution 400.

In conclusion, Mr. President, the American people can be assured that the intelligence community's fiscal year 1981 budget request has been examined just as scrupulously as any other Government program. We are convinced that the budget authority recommended in this bill represents a reasonable balance between needed intelligence capabilities and cost, and that it forms a sound basis to enable intelligence to meet the challenges of the future.

UP AMENDMENT NO. 1361

(Purpose: To strengthen the system of congressional oversight of intelligence activities of the United States)

Mr. HUDDLESTON. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON) proposes an unprinted amendment numbered 1361.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the bill insert the following:

SEC. . A new section. 407, is added to the Intelligence Authorization Act for Fiscal Year 1981

"SEC. 407. Presidential Findings and Congressional Oversight for Intelligence Activities.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States. Each such operation shall be considered a significant anticipated intelligence activity for the purposes of subsections (b) through (e) of this section.

"(b) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

"(1) keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the 'Select Committees') fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States, including any significant anticipated intelligence activity, except that (A) the foregoing provision shall not require approval of the Select Committees as a condition precedent to the initiation of any such anticipated intelligence activity, and (B) if the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairman and ranking minority members of the Select Committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate;

"(2) furnish any information or material concerning intelligence activities which is in the possession, custody, or control of any department, agency, or entity of the United States and which is requested by either of the Select Committee in order to carry out its authorized responsibilities; and

"(3) report in a timely fashion to the Select Committee any illegal intelligence activity or significant intelligence failure and any corrective action that has been taken or is planned to be taken in connection with such illegal activity or failure.

"(c) The President shall fully inform the Select Committees in a timely fashion of intelligence operations in foreign countries other than activities intended solely for ob-

taining necessary intelligence, for which prior notice was not given under subsection (b) and shall provide a statement of the reasons for not giving prior notice.

"(d) The President and the Select Committees shall each establish such procedures as may be necessary to carry out the provisions of subsections (b) and (c).

"(e) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the Select Committees or to Members of the Congress under this section. In accordance with such procedures, each of the Select Committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

Mr. HUDDLESTON. Mr. President, this amendment is identical to Senate bill 2284 which the Senate passed by a vote of 89 to 1 on June 3 of this year. It is a bill that establishes the congressional oversight procedures dealing with our intelligence agencies and relieves the intelligence agencies of some of its reporting requirements under the so-called Hughes-Ryan amendment.

The reason for putting it on this particular bill is that given the kind of legislative year that we all know we have this year this provides a further backup and assuring that the bill will receive consideration in the House of Representatives and will have an opportunity to go to conference and insure final passage.

For that reason and because the bill is identical and to make sure that all of the understandings that prevailed when the bill originally passed will be included in this amendment, I also submit for the RECORD and ask unanimous consent to have printed in the RECORD the floor statements and colloquys that were held during the original discussions of S. 2284 to make sure that all points are clarified in the legislative history of this particular act.

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

Mr. JAVITS. Mr. President, we have heard from many Members on this issue which is designed to resolve a difficult situation for all of us.

I have been here in executive sessions, closed door sessions, when the ad hoc Committee on Intelligence was chaired by Senator CHURCH, now chairman of the Foreign Relations Committee, of which I am the ranking member, and have shared with my colleagues some of the grief in the premature disclosures of highly secret and sensitive information.

We have all labored over how to deal with these problems, which are in the so-called gray or twilight zone of the Constitution, to wit, there is nothing in the Constitution that says that the President has exclusive possession of intelligence information and there is nothing in the Constitution that says we have.

There is nothing in the Constitution that says he can classify it, or that says we cannot obtain it if he does.

So I, first, have a keen appreciation of the labor which has gone into developing this particular measure which must still be considered interim, because the so-called intelligence charter just turned out to have too many problems to be done with relative celerity, and yet it was necessary to crystallize in some way the practice of the oversight committees.

I agree thoroughly with the need for simplifying that practice. There are some seven committees here that could have had this wrestling match with the executive—and that have had it on many occasions. There are still plenty of open questions on which we do wrestle, like executive privilege and similar matters, with the President.

I have, with the immensely gratifying support of the Senate and the House, been privileged to be the author of the war powers resolution, which dealt with so awesome a matter as war, and the modern way in which we are likely to get into war, as shown by our experience since World War II in dealing with that particular twilight zone problem.

I think we owe a deep debt of gratitude to the members of our Intelligence Committee. Indeed, first, to the leadership for having simplified in Senate Resolution 400 the practices which were rather uncontrolled in this Chamber and in the Senate at large; and, second, for having developed the committee system which they have, and now for the committee having at least taken the first step toward a resolution of these great problems.

My problem arose, also, out of one of those gray areas because today foreign policy is composed of military policy, which is in the hands of the Armed Services Committee, of economic policy, which is heavily in the hands of the Finance Committee and the Banking Committee, and it is also intelligence policy for which we now have a select committee.

To assume that the President is going to decide what we should know and not know makes it very difficult for the Foreign Relations Committee to be in at the "takeoffs" as well as the "landings," which was Arthur Vandenberg's famous expression for characterizing a bipartisan and unified foreign policy.

If we are going to wait for the President to tell us, and if, when we ask, we face a blank wall—even if it is only the blank wall of another committee—the foreign policy of the country will hardly be subject to any great ministrations from the Foreign Relations Committee.

So, earlier today, we had a most interesting discussion with the chairman, Senator BAYH, and the chairman of the relevant subcommittee, Senator HUDDLESTON, on this subject.

I was rather disappointed—although it was the fault of no one, as it turned out—that the ranking minority member, Senator GOLDWATER, who has such rich and ripe experience in this field, was not with us this morning. He had other responsibilities of his own at the time. But I hope that by now—and I say this to my friend and colleague—he may have had an opportunity to be apprised of what has occurred; and I hope he may find it possible to concur with the solutions at which we arrived, which will be disclosed shortly in an agreed-upon colloquy which I hope to have with whoever on the part of the committee—I suppose it will be Senator HUDDLESTON—has been properly empowered in that regard.

Before going into the colloquy, may I say, Mr. President, that one of the great joys in this Chamber is the personal friendships one develops. Notwithstanding how men may think differently, they build up by experience a mutual respect and often a mutual trust which is found among those of the most diverse views. It is an enormous satisfaction to me that I believe I enjoy such a relationship with the distinguished Senator from Arizona, a former candidate, of my party, for President.

The second is that sometimes you can sit down, notwithstanding the politics and our own deeply held views, and have open and frank discussion of our mutual disquiets and have the inestimable privilege of ending it by both parties saying, "I am persuaded."

That is what this colloquy means.

I believe that the Senators who represented the Intelligence Committee persuaded us that their design was to accommodate fully our responsibilities in the Foreign Relations Committee. I believe, from the evidence which I will present shortly, that we persuaded them that, under the circumstances of the measure which is before the Senate, plus the way in which the measure was interpreted in the committee report, we had reason to be disquieted; because the one thing we did not wish to do, and which we then learned—and it was a matter of great satisfaction—that they did not wish to do, was to resolve any substantive constitutional question.

There are some things you cannot resolve. They will continue to be a wrestling match. We have a very vivid example of that in the fact that the President kept to himself the military operation in Iran, and historians will have a great time with that one, notwithstanding the war powers resolution, notwithstanding whatever the Intelligence Committee had a right to expect in disclosures of covert operations or intelligence gathering or whatever it was that was being done in Iran.

So we did not try to do that. What we have tried to do is to perfect—so that we, too, might be able to do our job—the methodology by which they do their work and we do ours.

I am satisfied, and I believe our whole committee is satisfied, that the method we now have chosen, which will be evident from this colloquy, represents a fair, effective, and objective way in which to accomplish the results of simplifying the intelligence relations between the President and Congress—the Senate in this case—and limiting further the opportunities for misadventure, premature disclosure, and so forth.

It will not eliminate them; we know that. But I believe it will limit them further, and we will have to go beyond that and beyond that, considering the sensitivity of what goes on in the world, yet leaving unresolved the fundamental struggle which politically must go on, whatever its ups and downs may be.

I should like to join those colleagues who addressed themselves to this matter, in the hope that we always may be able to settle these affairs ourselves. I believe deeply in the division of powers among the different branches, and I hope very much that less and less will it be necessary for the courts to be our arbiter.

So I welcome this particular resolution of this matter as another stone in that arch, and I hope we always have that profoundly in mind.

With that before us, Mr. President, I should like to engage the manager of the bill in this colloquy.

Mr. President, I am grateful for the opportunity to have an exchange of views and assurances with my colleagues from the Intelligence Committee on several issues raised by S. 2284, the Intelligence Oversight Act of 1980, and its accompanying report language.

In this regard, I direct the Senate's attention to the preambular language of section 501(a) on lines 12–18 of page 173 of the bill, which conditions the obligations in the remainder of the bill as applying only:

"To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods."

I then direct the attention of the Senate to the language on page 4 of the Intelligence Committee report interpreting this portion of the legislation, as follows:

"In general terms, subsection (a) requires the Director of Central Intelligence and the head of each agency involved in intelligence activities to provide information to the two oversight committees. These obligations, however, are conditioned by two separate limitations. The obligations apply: (1) to the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government; and (2) to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods. Consistent with these conditions, the two oversight committees are to be kept fully and currently informed of intelligence activities, including any significant anticipated intelligence activity."

I should like to confirm the following understandings with the leadership of the Intelligence Committee which, to the extent that it might be inconsistent with the language of the report, would supersede such language.

The first preambular clause—which reads "[t]o the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government,"—is simply a routine disclaimer that the bill does not purport to change whatever authorities and duties may exist under the Constitution.

A similar disclaimer appeared in section 8d(1) of the war powers resolution. Its purpose is to state an important but accepted fact: That Congress does not have the power to change the Constitution by statute. However, this language should not be interpreted as meaning that Congress is herein recognizing a constitutional basis for the President to withhold information from Congress. We have never accepted that he does have that power, he has never conceded that he does not under certain circumstances, and the courts have never definitively resolved the matter.

But we are leaving that dispute for another day, specifically reserving both of our positions on this issue, and nothing in this statute should be interpreted as a change in that situation. What we are doing is simply legislating under the necessary and proper clause of article I a new arrangement or modus vivendi for the handling of information and consultations between Congress and the intelligence agencies, with both sides reserving their positions on the consitutional issues.

Is that the correct understanding of the meaning and intent of this language? I yield to Senator Huddleston.

Mr. HUDDLESTON. Yes, As the Senator from New York has stated the correct interpretation and meaning.

Mr. JAVITS. With respect to the second so-called limitation contained in the preamble to S. 2284, which reads "to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods," this standard simply states an obligation that applies equally to both branches, not uniquely or in a superceding manner to the executive branch, despite the fact that the subject of that sentence is specifically the "Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities." That standard refers, inter alia, to the need for adequate general procedures for the protection of such information in the course of sharing it between the executive branch and Congress, as called for in section 501(c) and (d).

The President and the executive branch are not the superior judge of "due regard" for the protection of sensitive information. The congressional subpena power is not affected by this preambular clause. Where a subpena is not employed, the statute does not compel the committees to accept executive branch determinations as to whether due regard has been afforded. This new statutory authority to afford "due regard" is imposed equally upon the executive and legislative branches.

The legislative branch is not bound by the definition of "due regard" adopted by the executive branch. Information provided to the committee by the executive may be provided by the committee to other committees subject only to the rules of the Senate to protect sources and methods.

Mr. HUDDLESTON. These understandings are correct.

Mr. JAVITS. I thank my colleague.

In addition to these two matters with respect to the preamble of section 501(a), I would like to confirm several other understandings as to the intent of the bill. Section 501(c) appears to provide for the establishment of three separate and distinct sets of procedures for "protecting against the unauthorized disclosure of classified information"—that is, one set which the President establishes unilaterally and one set each by the Senate and House Select Committees.

Moreover, section 501(d) appears to provide for the establishment of two additional and possibly distinct, sets of procedures, one by the full Senate and one by the full House.

In addition, these rules which bind the full Senate and House have to be drawn in consultation with the Director of the Central Intelligence, whereas there is no reciprocal role for the Congress in the unilateral right of the President to set procedures for the executive branch (which nonetheless govern what can be disclosed in the first place.)

Does the consultative role of the Director of Central Intelligence in the framing of Senate and House procedures give a veto to the executive over information that can be passed on to the full Senate and to other committees, and does it give the DCI any role in determining what information in the select committee's possession may "require the attention of" the full Senate or another committee, such as the Foreign Relations Committee?

Mr. HUDDLESTON. The President has no statutory authority under sections 501(c) and (d) or any other reference to procedures to withhold information on the grounds that the procedures of the committees or the Houses are not satisfactory to the President or to the Director of Central Intelligence.

The Congress is required by statute to consult fully and in detail with the Director of Central Intelligence. This is a mandate to the Congress, and does not imply that agreement between the Congress and the executive branch is required. For example, such anagreement is not required for the procedures governing the final sentence of subsection (d).

Mr. JAVITS. My next question——

Mr. GOLDWATER. Mr. President, if I could interrupt my friend, will the Senator yield?

Mr. JAVITS. I yield.

Mr. GOLDWATER. I am attracted to the statement on the Senator's page 6.

On page 6 when the Senator states "protecting against the unauthorized disclosure of classified information," we are having, as the Senator knows, problems with this because we feel, without any real deep investigation, but we have reason to believe that disclosure is coming more from the executive branch than any other side. My question concerns the responsibility of correction in this, and I think we have a great gap in here as to what constitutes correction when sensitive information is released by Members of Congress, the committee, agencies, or the administration. This is what troubles us.

Mr. JAVITS. Mr. President, if I may reply, the very purpose of this particular question and answer was to say that we are, each of us, in terms of rules and regulations, bound only by what we do, each of us, according to our processes and in terms of general law. Then the law will control each or any of us. The reason for this point is that there is introduced here a consultative role for the Director of Central Intelligence that does not mean anything substantive in terms of what we decide we want to do to protect unauthorized disclosure, acting as the Senate or as the House.

I think that is quite consistent with the point the Senator just made.

Mr. GOLDWATER. I realize that, and the point of my question was not to raise any prolonged discussion here but to indicate that I feel there is a definite need in this field for substantive and understood legislation.

Mr. JAVITS. I thank my colleague and I agree.

Mr. TSONGAS addressed the Chair.

Mr. JAVITS. May I go on?

Mr. HUDDLESTON. Yes.

Mr. JAVITS. Mr. President, my next question relates to section 501(b):

Does information reported to the eight-man leadership group under section 501(a)(1)(B) have to be reported to the select committee under 501(b)? Is there anything to prohibit the passing on of information given to the leadership group under 501(a)(1)(B) to the full Senate or, to the Foreign Relations Committee? If information has been withheld from both the select committee and the leadership group (as section 501(b) envisages), can it be withheld on any grounds other than "independent constitutional authority," and, if so, what grounds? If prior notice has been withheld on grounds of "independent constitutional authority" on what basis can the President be compelled to report it subsequently under section 501(b)?

Mr. HUDDLESTON. In the case of prior notice to the eight leaders under section 501(a)(1)(B), the intent is that the full oversight committees will be fully informed at such time as the eight leaders determine is appropriate. The committee will establish the procedures for the discharge of this responsibility under section 501(c).

Section 501(b) recognizes that the President may assert constitutional authority to withhold prior notice of covert operation, but would not be able to claim the identical authority to withhold timely notice under section 501(b). A claim of constitutional authority is the sole grounds that may be asserted for withholding prior notice of a covert operation. However, as stated in the report, highly senstitive aspects of an operation, such as the identity of an agent, may be withheld prior to implementation of such an operation.

Mr. JAVITS. My last question will be as follows:

It is my understanding that several changes will be made in the language of the report to clarify matters agreed to by the Intelligence Committee. First, on page 6 of the report in the sixth paragraph, the words "or classified information from unauthoried disclosure" shall be deleted. Second, the last sentence in that paragraph shall read: "This statute does not provide a statutory right to withhold information from Congress when subpenaed by Congress."

Finally, on page 12, the fourth full paragraph shall read: "The provisions of sub-

section (b) are expressly not conditioned upon the preambular clauses that apply to subsection (a)."

Mr. HUDDLESTON. The Senator is correct. I will just say at this point that, speaking for the committee, we appreciate the interest the Senator has manifested in this legislation and the suggestions he has made and his help in working out these changes and these understandings.

So, Mr. President, I ask unanimous consent that these changes just indicated by the Senator from New York be made in a star print of report No. 96–730 on S. 2284.

I also want to state for the record that these answers have been reviewed with the administration, represented by Mr. Lloyd Cutler, Counsel to the President; Mr. Dan Silver, General Counsel of the CIA; and Mr. Frederick Hitz, Legislative Counsel of the CIA, and that the administration agrees with each one and with the changes in the report.

Mr. JAVITS. Mr. President, I thank my colleague, and I wish to express to him again and to Senator BAYH and their staffs and to Senator GOLDWATER my deep satisfaction in having been able to work this matter out to our general satisfaction.

The PRESIDING OFFICER. Is there objection to the star print? the Chair hears none, and it is so ordered. It needs to be sent to the desk.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. JAVITS. I yield to Senator Goldwater.

Mr. GOLDWATER. I want to merely compliment my friend from New York for the usual perceptive way he has gone into this.

You know, Senators sitting here listening to this discussion, and knowing of your feelings in these matters, I am going to repeat a suggestion I have made to you, and I have made to other Members of this body from time to time, that maybe we should consider the fact that the world, with its more rapid movement, involving the United States more and more, that the Senate might be wise to consider the combination of pro forma consolidation of several committees, and I am thinking of Foreign Relations which I cannot believe can operate completely anymore without access to intelligence, the Armed Services Committee which I cannot believe can act in a full and proper way without access to the formation of foreign policy, and vice versa, and I would like to seriously suggest once again, as I have done to the leadership of this body on numerous occasions, that possibly the time has come for one group to consider all of these things or at least three groups to act in a concentrated way when needed so that we can come up with answers faster than having to wait months and months and months for a colloquy to take place on the floor.

Let me end by saying that I say also with a certain knowledge that we are going to have to solve these problems ourselves that come up between the administrative branch and the legislative branch. The courts have adequately proven to me down through the 200 years of our history that they are never going to take that ball in their own court.

I merely make these suggestions again on the floor of the Senate to my friend from New York, together with my thanks for having thought these important matters through and to cause this colloquy.

Mr. JAVITS. I thank my colleague. I certainly will give, as I always do, the most prayerful consideration to his suggestion, bearing in mind that we have already launched an effort with Armed Services to at long last see what military means it takes to effectuate our foreign policy.

We all owe a debt of gratitude to Henry Bellmon and John Glenn for having initiated that inquiry.

I yield to Senator Bayh 1 minute.

Mr. BAYH. I appreciate the Senator's yielding to me.

I would like to express my appreciation to him for pointing out the delicacy of writing legislation like this and for doing so in a manner that does not send the wrong kind of signals.

I hope this legislation can result in continuing the kind of relationship we have had with the President. I do not need to get into a long discussion, but I must say that I think the President would have been better served if there had not been one exception in his ordinarily forthcoming policy.

Be that as it may, what we are after here is to make sure that Congress, in the words of the Senator from New York and our former colleague, Senator Vandenberg, should be in on the takeoff so that we can be in on a better landing.

I appreciate the way in which he has worked with us to ease his misgivings, in his spirit of cooperation to move this legislation forward, and we are in his debt.

Mr. JAVITS. I thank my colleague for his remarks and his friendship.

I yield to Senator Moynihan.

Mr. MOYNIHAN. I thank my revered colleague for giving me this moment to express my admiration and awe at the constitutional mastery which he has brought to this complex question, and the great mark of experience which is the prudential judgment that we were not going to resolve a constitutional issue of 2 centuries of pendency, perhaps deliberately left unresolvable, but we were going to make clear what we were not going to do as well as what we were going to do, and he does it with such mastery that it inspires my acknowledgement.

I would like to make one small observation, which is purely obiter, you might say, with respect to the phenomenon of unauthorized disclosure.

I would share his judgment that there can be no unauthorized disclosure by Congress. We are equal branches. But there is a rule of intelligence, which the Senator knows well from his wartime experience, which is that you protect sensitive information by compartmentation. The more important that matter is the fewer persons you want to know about it, and with respect to an executive branch judgment about what can be shared with the Congress we could usefully look at the fact that if only five persons know it, something in the executive branch, they might wish to disclose it to no more than eight here. But if 105 do in the executive branch, adding 15 does not significantly widen that circle.

There are almost mathematical principles upon which you can reach such judgments, and they ought to be pursued.

I just offer that as a thought, but certainly I want to say that this is a better bill because of the Senator's finding, I mean with all the other things you have to do, the energy to do it.

Mr. JAVITS. I thank my colleague very much.

May I say, however, that we are a collegial body and, hence, the success which the Senator has is properly entrusted to the rulemaking which we now have to do under this measure when it becomes law, both in the House and in the Senate.

But that is the problem for us. We are all equal and we all have the right to know, and that is our duty.

I thank my colleague very much for his kind thoughts.

Mr. YOUNG. Mr. President, I have a question of the manager of the bill. In the past, appropriations committees have had to hide the appropriations for intelligence agencies. In order to do that, we have had to have information about what was being requested. Are we excluded under this bill from knowing the intended purpose of the money requested and the kinds of operations the various intelligence agencies are conducting?

Mr. HUDDLESTON. No, not at all. As a matter of fact, I think the appropriations process now is much more extensive than it has been in previous years.

The Select Committee on Intelligence is, in effect, the authorizing committee and does develop the appropriations in conjunction with the Armed Services Committee and the Appropriations Committee. The Senator, as a member of the Appropriations Committee, is to have access to all information that the Committee on Intelligence has. As a matter of fact, the Intelligence Committee has an affirmative obligation to report to the Senator's committee information that is required by the Senator's committee. And the Senator certainly has, as a member of the Appropriations Committee, the prerogative of requesting from the committee any information that the Senator deems necessary.

Mr. YOUNG. I thank the Senator for that explanation. We in Appropriations do not seek oversight, but we do have to know how the money is being spent.

Mr. NUNN. On the question of tactical intelligence which I made reference to in my remarks, I would like to address a couple of questions to the Senator from Indiana, who is very familiar with this subject, and who, I might add, has been most cooperative with the Armed Services Committee in ironing out any difficulties that we have had, I think, in the last 2 years to have a very smooth working relationship in this area where there necessarily is some overlap.

I note that the bill does not contain any definition of "intelligence activities" over which the bill gives the Intelligence Committee oversight.

Is it a correct understanding that this bill is intended to be, in effect, a legislative embodiment of Senate Resolution 400?

Mr. BAYH. That is accurate; the Senator from Georgia puts his finger right on it. We have been trying to incorporate the definitions and the actual means of implementation of Senate Resolution 400 into the provisions of this bill.

Mr. NUNN. Is it the view of the Senator from Indiana that the definition of intelligence activities contained in Senate Resolution 400 is carried over into this bill and that the term has the same meaning in this bill as it does in Senate Resolution 400?

Mr. BAYH. The Senator from Georgia is accurate.

Mr. NUNN. In other words, there was no intention on the part of the committee to change the scope of that definition so as to include within the meaning of intelligence activities tactical military intelligence having no policymaking function?

Mr. BAYH. As far as this House goes, that is accurate, I say to my friend from Georgia.

I would just like to respond to his thoughtful remarks earlier, if I might, by saying that I think we have shown that it is possible for committees and their members to have common and sometimes overlapping responsibilities, even differing views, and where those responsibilities overlap to work out those differences. It has been a privilege for our committee and for the Senator from Indiana to work with the Senator from Georgia, the Senator from Mississippi, and other members of the Armed Services Committee.

I have no question in my mind but we can continue the same kind of cooperation, based on the same practices that have existed in the past, with the passage of this legislation.

HISTORY OF THE BILL

S. 2284 was introduced on February 8, 1980, as the National Intelligence Act of 1980, by Senator Huddleston, chairman of the Subcommittee on Charters and Guidelines of the Select Committee on Intelligence. The bill was cosponsored by Senator

Mathias, vice-chairman of the Subcommittee on Charters and Guidelines, and by Senator Bayh and Senator Goldwater, chairman and vice-chairman of the Select Committee. It was introduced in the House as H.R. 6588 by Representative Boland, chairman of the House Permanent Select Committee on Intelligence.

Hearings on the bill began before the Select Committee on Intelligence on February 21, 1980. From the outset a principal issue was the provision for congressional oversight of intelligence activities, including modification of the Hughes-Ryan Amendment of 1974 requiring reports on CIA covert operations to as many as eight committees of the Congress. As introduced, S. 2284 repealed that requirement and would have substituted in its place a general provision requiring prior notice to the two intelligence oversight committees and full access by those committees to information concerning all intelligence activities. The Administration initially opposed this provision. While strongly urging the repeal of the Hughes-Ryan reporting requirement, Director of Central Intelligence Stansfield Turner testified that the Administration desired to "continue the current reporting standard under the Hughes-Ryan Amendment by requiring that special activities [covert operations] be reported 'in a timely fashion.'"

In addition to congressional oversight, S. 2284 as introduced would have provided a comprehensive statutory charter for the intelligence community. The Select Committee had held 13 days of hearings in 1978 on an earlier version of the charter, S. 2525, introduced by Senator Huddleston and other Committee members in the 95th Congress. During 1980 the Committee held an additional 9 days of hearings on S. 2284 covering the full range of charter issues. However, at meetings of the Committee held May 1, 6 and 8, 1980, two weeks after the end of these hearings, it was decided to focus on the congressional oversight provision of S. 2284, with other matters to be considered as separate legislation.

During the proceding weeks, an amended version of the congressional consultations with the Administration. Additional language providing for prior notice in extraordinary circumstances to 8 committee and congressional leaders (section 501(a)(1)(B), proposed by Senator Inouye) and for the reporting of significant intelligence failures (section 501(a)(3), proposed by Senator Wallop with modifications by Senator Moynihan) was adopted by the Committee on May 6, 1980. S. 2284, as amended, was approved unanimously by the Committee on May 8, 1980, as the Intelligence Oversight Act of 1980, with a recommendation for favorable action.

With respect to comprehensive charter legislation, the chairman of the Select Committee, Senator Bayh, stated at the May 6 meeting: "There is no question that such a charter is essential to place the intelligence community on the firmest possible constitutional foundation, and the Select Committee is fully committed to carrying that enterprise forward to completion.

POSITION OF THE ADMINISTRATION

The Administration fully supports S. 2284, as reported by the Select Committee on Intelligence with amendments, and the report of the Select Committee thereon.

GENERAL STATEMENT

The purpose of this Act is to place in statute the oversight process that has been in effect since 1976. It is based on the cumulative experience of successive oversight bodies since 1947, but primarily on the experience of the Select Committee on Intelligence since 1976. The language derives from Section 202 of the Atomic Energy Act of 1946, from Senate Resolution 400, May 19, 1976, and from Executive Order 12036, January 26, 1978. The only present statutory provision for intelligence oversight is the Hughes-Ryan Amendment of 1974 (Section 662 of the Foreign Assistance Act of 1961), which requires timely reporting of CIA covert operations to as many as eight congressional committees. This requirement is repealed by Section 2 of this Act, and such operations are expressly included in the provisions of this Act for "significant anticipated intelligence activities."

Section 3 of this Act amends the National Security Act of 1947 to add a new Section 501, Congressional Oversight. Section 501 establishes statutory requirements for congressional oversight of the activities of the intelligence community and for the provision to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence of information necessary for this purpose. In general terms, subsection (a) requires the Director of Central Intelligence and the head of each agency involved in intelligence activities to provide information to the two oversight committees. These obligations, however, are conditioned by two separate limitations. The obligations apply: (1) to the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government; and (2) to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods. Consistent with these conditions, the two oversight committees are to be kept fully and currently informed of intelligence activities, including any significant anticipated intelligence activity.

The separate amendment to Section 662 of the Foreign Assistance Act of 1961 provides that each CIA covert operation is included as a "significant anticipated intelligence activity" to be reported in advance to the two intelligence committees. This requirement of prior notice of significant activities does not require committee approval as a condition precedent to their initiation. Provision is made for prior notice only to the chairman and ranking minority members of the committees, and to the leaders of each House, if the President determines such limitation is essential to meet extraordinary circumstances affecting vital national interests. Subject to the two conditions under subsection (a), each committee is also to be furnished any information or material concerning intelligence activities which it requests to carry out its authorized responsibilities and to be informed in a timely fashion of any illegal intelligence activity or significant intelligence failure and any creative action that has been taken or is planned.

Subsection (b) requires timely notice to the committees of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a), and a statement by the President of the reasons for not giving prior notice.

Subsection (c) provides for the establishment of procedures by the President and by each oversight committee to carry out the foregoing provisions. Subsection (d) recognizes the responsibility of each House to ensure, by rule or resolution, the protection from unauthorized disclosure of sensitive information furnished under this section, and the responsibility of each oversight committee under such procedures to bring to the attention of its respective House, or the appropriate committees, any matter requiring their attention.

Out of necessity, intelligence activities are conducted primarily in secret. Because of that necessary secrecy, they are not subject to public scrutiny and debate as is the case for most foreign policy and defense issues. Therefore, the Congress, through its intelligence oversight committees, has especially important duties in overseeing these vital activities by the intelligence agencies of the United States. Section 501 is intended to authorize the process by which information concerning intelligence activities of the United States is to be shared by the two branches in order to enable them to fulfill their respective duties and obligations to govern intelligence activities within the constitutional framework. The Executive branch and the intelligence oversight committees have developed over the last four years a practical relationship based on comity and mutual understanding, without confrontation. The purpose of Section 501 is to carry this working relationship forward into statute.

SECTION-BY-SECTION ANALYSIS

AMENDMENT TO SECTION 662 OF THE FOREIGN ASSISTANCE ACT OF 1961

"Section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) is amended by striking out in subsection (a) "and reports, in a timely fashion" and all that follows down through the period in subsection (b) and inserting in lieu thereof a period and the following: 'Each such operation shall be considered a significant anticipated intelligence activity for the purposes of section 501 of the National Security Act of 1947.'."

This amendment repeals the congressional reporting requirement of the Hughes-Ryan Amendment of 1974 which provides that no funds may be expended for any CIA covert operation unless and until the President "reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives." This language is replaced by a requirement that each such operation be considered a "significant anticipated intelligence activity" for the purposes of the new Congressional Oversight provisions. The effect is to limit reporting to the two intelligence oversight committees, as compared with the seven committees that now receive such reports, and also to substitute for "timely" reporting the procedures for prior notice discussed below. These is no change in the Hughes-Ryan requirements for Presidential findings. The waiver which applies during a period of operations initiated under "an exercise of powers by the President under tre War Powers Resolution" is repealed.

Section 501(a)—Preambular clause: "Authorities and Duties"

"SEC. 501. (a) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government . . ."

The first preambular clause is intended to make it clear that the obligations imposed by subsection (a) are to be carried out to the exent consistent with all applicable authorities and duties including those conferred by the Constitution on both the Executive and Legislative branches. There is a recognition that such constitutional authorities and duties of the branches may sometimes come into conflict with one another. Subsection (a) does not prescribe hard and fast requirements for what may be a gray area resulting from the overlap between the constitutional authorities and duties of the branches.

There is no mention in the Constitution of intelligence activities. Whatever constitutional authorities may exist must follow from other constitutionally conferred duties, such as the power of the President to act as Commander-in-Chief and to make treaties with the advice and consent of the Senate, or the power of the Legislature to "provide for the common defense," "to define and punish

piracies and felonies committed on the high seas, and offenses against the law of nations," "to declare war, . . . and to make rules concerning captures on land and water," "to make rules for the government and regulation of the land and naval forces," "to make all laws which shall be necessary and proper for carrying into execution . . . all other powers vested by this Constitution in the government of the United States, or in any Department or officer thereof," and to insist that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law."

Nothing in this subsection is intended to expand or to contract or to define whatever may be the applicable authorities and duties, including those conferred by the Constitution upon the Executive and Legislative branches.

Section 501(a)—Preambular clause: "Protection from unauthorized disclosure"

"SEC. 501. (a) . . . and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods. . . . "

The clause in Section 501(a) concerning the protection of classified information and intelligence sources and methods from unauthorized disclosure is intended to recognize the shared responsibilities of the Executive and Legislative branches for such protection.

The Administration recognizes that the intelligence oversight committees of the House and Senate are authorized to receive such information. However, it is recognized that in extremely rare circumstances a need to preserve essential secrecy may result in a decision not to impart certain sensitive aspects of operations or collection programs to the oversight committees in order to protect extremely sensitive intelligence sources and methods. This statute does not provide a statutory right to withhold information from Congress when subpoenaed by Congress.

Subsection (d), discussed below, provides expressly for the ffulfillment by each House of its responsibilities for the protection of sensitive information from unauthorized disclosure.

Section 501(a)(1)—Informing the Intelligence Committees

"SEC. 501. (a) . . . the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

(1) keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the 'Select Committees') fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, of entity of the United States, including any significant anticipated intelligence activity, except that (A) the foregoing provision shall not require approval of the Select Committees as a condition precedent to the initiation of any such anticipated intelligence activity, and (B) if the President determines it is essential to list prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairmen and ranking minority members of the Select Committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate;

FULLY AND CURRENTLY INFORMED

Under Section 501(a)(1), the intelligence agencies shall have the affirmative duty to keep the two intelligence committees fully and currently informed. The origin of the phrase "fully and currently informed" is the requirement contained in Section 202 of the Atomic Energy Act of 1946. For over thirty years this authority served the information needs of the Joint Committee on Atomic Energy well by assuring it complete and timely notice of actions and policies of the Federal government in the field of atomic energy. The language is also contained in Senate Resolution 400, 94th Congress, and has served the Select Committee well by ensuring that the Committee is informed of intelligence activities in such detail as the committee may require. The responsibility of the Executive here is not limited to providing full and complete information upon request from the committees; it also includes an affirmative duty on the part of the head of each entity to keep the committees fully and currently informed of all major policies, directives, and intelligence activities. The references to "any" department, agency or entity in subsection (a) impose obligations upon officials to report only with respect to activities under their responsibility, subject to the procedures established by the President under subsection (c).

SIGNIFICANT ANTICIPATED INTELLIGENCE ACTIVITIES

Section 501(a)(1) specifically states that the committees will be kept "fully and currently informed . . . of significant anticipated intelligence activities." Such activities include CIA covert operations and, among other things, certain collection and counterintelligence activities. As was stated in the legislative history of S. Res. 400, Report of the Committee on Government Operations, U.S. Senate, to Accompany S. Res. 400, 1976, pages 26–27:

An anticipated activity should be considered significant if it has policy implications. This would include, for example, activities which are particularly costly financially, as well as those which are not necessarily costly, but which have . . . [significant] potential for affecting this country's diplomatic, political, or military relations with other countries or groups . . . It excludes day-to-day implementation of previously adopted policies or programs.

The Executive branch and the Committee expect to work together, as we have in the past, to delineate the matters covered by this provision.

The intent is that the Committee will indicate to the Executive branch those categories of intelligence activities for which it expects advance information, and that those categories will be discussed fully with the Executive branch. As required by the separate amendment to Hughes-Ryan, CIA operations in a foreign country, other than activities intended solely for obtaining necessary intelligence, are to be considered "significant intelligence activities" for this purpose. It is intended that such intelligence operations abroad by other agencies would also be subject to the prior notice designation. In addition, certain intelligence collection and counterintelligence activities may be included if, for example, they are governed by high-level Executive branch approval requirements similar to those that apply to CIA covert operations. Such collection activities are not, however, subject to the separate provisions of subsection (b), discussed below, for timely notice and a statement of the reasons for withholding prior notice. Any collection activity that has not been designated by the Committee as "significant" or that is not governed by the type of approval requirements applying to CIA covert operations would, of course, be subject to the requirements to keep the Committee "fully and currently informed." Special procedures for handling highly sensitive information in these areas may also be established by each committee under subsection (c).

Prior notification of intelligence activities that affect foreign policy encourages consultation between the branches and offers the possibility that better decisions might be made. In testimony on February 21, 1980 before the Select Committee, Admiral Turner stated that "the actions of both [intelligence] committees in reviewing these covert action findings [have] influenced the way in which we have carried them out." He said further that the influence had been "absolutely" beneficial. Similarly, former Director Colby said in testimony on March 24 that discussion of significant planned activities "enables the Executive to get a sense of congressional reaction and avoid the rather clamorous repudiation which has occurred in certain cases . . . and I think that is a helpful device."

The Executive Branch has argued that the President's "constitutional authorities and duties," mentioned in the preamble, might permit a withholding of prior notice through the exercise of the President's constitutional authority. The Constitution does not specifically address the allocation of powers to the President associated with national security and foreign policy matters beyond such functions as the duties of the Commander-in-Chief and the power of the President to appoint ambassadors. Congress is given the powers to declare war, raise and support armed forces, and make rules and regulations governing their use, and, in the Senate, give advice and consent to treaties and the appointment of ambassadors. Those powers concerning national security and foreign policy are in a "zone of twilight" in which the President and Congress share authority whose distribution is uncertain.[1]

Former DIC Colby has given an example of a rare extraordinary emergency situation when the President might be required to act to defend the vital interests of the nation and there might not be time to provide notice until the plan had begun. Mr. Colby stated:

I can conceive of a cable arriving in the wee hours of the night which says that you have an opportunity to do something of vast importance. It makes a great deal of sense but . . . the return cable has to go out in a matter of three hours. It will be a little hard in that situation to be able to go through the procedure [of notifying Congress] . . . but to hold it because you couldn't get to the Committee at that point I think would be a mistake.

The requirement to "fully and currently inform" the oversight committees of "any significant anticipated intelligence activity" is intended to mean that the committees shall be informed at the time of the Presidential finding that authorizes initiation of such activity. Arrangements for notice are to be made forthwith, without delay.

Congress, of course, has the power to attach the condition of prior notice to expenditure of funds for intelligence activities. The preambular clause referring to authorities under the Constitution is an indication that a broad understanding of these matters concerning intelligence activities can be worked out in a practical manner, even if the particular exercise of the constitutional authorities of the two branches cannot be predicted in advance.

Section 501(a)(1)(A)—Approval of committees not required for anticipated intelligence activity

Section 501(a)(1)(A) states simply that prior notice is required but "the foregoing provision shall not require approval of such committees as a condition precedent to the initiation of any such anticipated intelligence activity." This intent can be

[1] *U.S. v. American Tel. and Tel. Co.*, 567 F 2d 121, 128 (D.C. Cir. 1977). *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 570, 637–638 (1952), opinion of Mr. Justice Jackson.

traced to S. Res. 400 where it is expressed in different terms in Section 11(A). During debate on the measure, Senator Howard Baker requested such a priviso to be added: "to make absolutely clear that the inclusion of the words 'including any significant anticipated activities' did not constitute a requirement that the Select Committee either give its consent or approval before any covert action or intelligence activity could be implemented by the Executive branch. Rather, the intent of [including those words] is to require prior consultation between the Committee and the intelligence community, but not prior consent or approval.[2]

Section 501(a)(1)(B)—Limited prior notice

Provision has been made in (a)(1)(B) for those rare cases in which the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting the vital interests of the United States. For these cases, the President shall limit prior notice to the Chairmen and ranking minority members of the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, the Speaker and the minority leader of the House of Representatives, and the majority and minority leaders of the Senate.

The purpose of this limited prior notice in extraordinary circumstances is to preserve the secrecy necessary for very sensitive cases while providing the President with advance consultation with the leaders in Congress and the Chairmen and ranking minority members who have special expertise and responsibility in intelligence matters. Such consultation will ensure strong oversight, and at the same time, share the President's burden on difficult decisions concerning significant activities. This limited prior notice calls only for prior consultation, and in no way suggests prior approval.

Section 501(a)(2)—Access to information

"SEC. 501. (a) . . . the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

* * * * *

(2) furnish any information or material concerning intelligence activities which is in the possession, custody or control of any department, agency or entity of the United States and which is requested by either of the Select Committees in order to carry out its authorized responsibilities;"

Section 501(a)(2) states that agency heads are to furnish the committee any document or information which the agency has in its possession, custody, or control. The purpose of this section is to supplement subsection (a)(1), which requires that the committees be kept fully and currently informed, by permitting the committees to obtain information upon request that is relevant to its authorized responsibilities.

Many of the mandated duties of the Committee do not require access to sources and methods, but some do. In the usual course of the Committee work, the identities of human sources are not needed, nor have they been requested. A hypothetical case would serve to illustrate the point. An ally of the United States has a source highly placed in the cabinet of Ruritania. This ally is willing to give the information to the United States provided that the nature of the source is disclosed to the President and the Director of Central Intelligence only and no one else. The information is of critical importance to the United States. The President therefore would agree to such a condition, and the committees would not seek nor expect to receive the source of such information. However, in the event that the information turned out to be spurious and was actually contrived by the Ruritanian government and caused harm to the United States in some way, the intelligence oversight committees would, in the course of their proper inquiries, have every right to learn the identity of the source. This underlines the general approach of the oversight committee. The right of full access to any intelligence information implies some measure of discretion. It does not mean trucking the entire product of the intelligence community each day to the Committee offices. It does mean, however, that should the Committee believe it necessary, in the conduct of its mandated duties, all the information it desires shall be supplied consistent with subsection (a). The occasions when any information including sources and methods might be sought are almost always confined to abuse or misuse situations or in the case of intelligence failures. The Committee has exercised this authority on a number of occasions over the past five years without any unauthorized disclosure of classified information or sensitive sources and methods.

Section 501(a)(3)—Reports on illegal activities or significant intelligence failures

"SEC. 501. (a) . . . The Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

* * * * *

(3) report in a timely fashion to the Select Committees any illegal intelligence activity or significant intelligence failure and any corrective action that has been taken or is planned to be taken in connection with such illegal activity or failure."

Section 501(a)(3) provides that the head of each intelligence agency is to report any intelligence activity that violates any law of the United States, including violation of any Executive Order or Presidential Directive, or significant violation of an entity rule or regulation issued pursuant to law. A report would be made to the intelligence oversight committees upon confirmation of any violation, and would include a description of what corrective action has been taken or is expected to be taken by the entity with respect to such violations.

This requirement parallels similar language in section 11(c) of Senate Resolution 400 for reporting activities which "constitute violations" and in section 3-403 of Executive Order 12036 for reporting activities that "are illegal." It is not intended in any way to affect or alter the responsibilities and practices of the Executive branch for reporting to appropriate authorities, including the Attorney General, evidence of possible violations and activities which raise questions of legality. (See, *inter alia*, sections 1-706, 1-709, 3-102, 3-2, and 3-3 of Executive Order 12036.)

The Director of Central Intelligence and the head of each agency are also to report to the intelligence oversight committees each significant intelligence failure in the work of that entity or for which the entity is responsible; this report would likewise contain a description of any corrective actions which have been taken or which are planned to ensure that such a failure does not recur. Significant failures to be reported would include major errors in analysis and/or prediction, failures in technical collection systems or other clandestine operations, and failures to protect sensitive sources and methods information from unauthorized disclosure.

Section 501(b)—Timely notice

"SEC. 501. (b) The President shall fully inform the Select Committees in a timely fashion of intelligenuce operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a) and shall provide a statement of the reasons for not giving prior notice."

The Senate Select Committee and the Executive branch and the intelligence agencies have come to an understanding that in rare extraordinary circumstances if the President withholds prior notice of covert operations, he is obliged to inform the two oversight committees in a timely fashion of the action and the reasons for withholding of such prior notice. This requirement retains in full force the current statutory obligation under the Hughes-Ryan Amendment for the reporting of covert operations in a timely fashion to the two oversight committees (but not to other committees). The further requirement of a statement of the President's reasons for not giving prior notice is intended to permit a thorough assessment by the oversight committee as to whether legislative measures are required to whether the President had valid grounds for withholding prior notice and whether legislative measures are required to prevent or limit such action in the future.

The term "intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence," is drawn directly from the Hughes-Ryan Amendment and applies to covert operations abroad by any department, agency, or other entity of the United States. It does not apply to activities intended solely to collect or otherwise obtain necessary intelligence. Collection activities are intended, however, to be covered by the requirements of subsection (a) for informing the committees of "significant anticipated intelligence activities" in the circumstances described previously, as well as by the requirements of subsection (a) for keeping the committees "fully and currently informed of all intelligence activities," for furnishing "any information or material concerning intelligence activities" requested by the committees to carry out their responsibilities, and for reporting illegal intelligence activities and significant intelligence failures.

The provisions of subsection (b) are expressly not conditioned upon the preambular clauses that apply to subsection (a).

Section 105(c)—Presidential and committee procedures

"SEC. 105. (c) The President and the Select Committee shall each establish such procedures as may be necessary to carry out the provisions of subsections (a) and (b)."

The authority for procedures established by the President is based on Executive Order 12036 and is intended to apply to the Executive branch. The President may, for example, prescribe procedures under which certain information is to be furnished by a designated official. Such procedures shall ensure that the oversight committees are fully and currently informed, that they are furnished requested information, and that they receive reports of illegal activities and intelligence failures in accordance with subsections (a) and (b).

The authority for procedures established by the Select Committees is based on the current practice of the committees in establishing their own rules. One or both committees may, for example, adopt procedures under which designated members are assigned responsibility on behalf of the committee to receive information in particular types of circumstances, such as when all members cannot attend a meeting or when certain highly sensitive information is involved.

Section 501(d)—Congressional procedures to protect national security information

"SEC. 501. (d) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each

[2] Congressional Record, 94th Congress, 2d session, May 13, 1976, v. 122, p. 7261.

establish by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the Select Committees or to Members of the Congress under this section. In accordance with such procedures, each of the Select Committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees."

Under the preambular clause in subsection (a), the responsibility of each agency head to inform the intelligence committees is to be carried out "to the extent consistent with due regard for the protection of classified information and intelligence sources and methods from unauthorized disclosure." The Congress recognizes that it has a similar responsibility to that of the Executive branch, to protect national security secrets from unauthorized disclosure. Subsection 501(d) requires both the House of Representatives and the Senate in consultation with the Director of Central Intelligence to establish procedures to protect national security information from unauthorized disclosure. Establishment and implementation of such procedures is intended to ensure consistency with "due regard" for protection of such information. The procedures of both Houses under subsection (d), as well as the procedures under subsection (c), will presumably be worked out with the Executive branch in the same healthy spirit of give-and-take that has prevailed since this Committee began its work in 1976. These procedures will not constitute a "standing subpoena"; in fact, while operating under the provisions of Senate Resolution 400 which also used the phrases fully and currently informed'., "furnish any information", and "significant anticipated activities", the Committee has not once found it necessary to issue a subpoena to obtain information from the Executive branch.

Both the House of Representatives through H. Res. 658, 95th Congress, and the Senate through Senate Resolution 400. 94th Congress, have already established certain procedures to protect national security information or materials provided to them from unauthorized disclosure as called for in subsection (d). The provisions that contribute to effective physical security and sound security practices which would protect against unauthorized disclosure are contained in these resolutions and are envisioned by subsection (d). Under the procedures required by subsection (d), the Select Committee is to call to the attention of the Senate, or any appropriate Senate Committee, intelligence matters requiring its attention.[3] This provision is subject to the security restrictions in the procedures adopted under subsection (d). The relevant sections of Senate Resolution 400 are as follows:

"SEC. 6. No employee of the select committee or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing and under oath to be bound by the rules of the Senate (including the jurisdiction of the Select Committee on Standards and Conduct and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of Central Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classifed information to which such employee or person will be given access by such committee.

"SEC. 7. The select committee shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

"SEC. 8. (a) The select committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote. No member of the select committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this section.

"(b)(1) In any case in which the select committee votes to disclose publicly any information which has been classified under established security procedures, which has been submitted to it by the executive branch, and which the executive branch requests be kept secret, such committee shall notify the President of such vote.

"(2) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of such vote is transmitted to the President, unless, prior to the expiration of such five-day period, the President, personally in writing, notifies the committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the national interest of the United States posed by such disclosure is of such gravity that it outweighs any public interest in the disclosure.

"(3) If the President, personally in writing, notifies the select committee of his objections to the disclosure of such information as provided in paragraph (2), such committee may, by majority vote, refer the question of the disclosure of such information to the Senate for consideration. The committee shall not publicly disclose such information without leave of the Senate.

"(4) Whenever the select committee votes to refer the question of disclosure of any information to the Senate under paragraph (3), the chairman shall, not later than the first day on which the Senate is in session following the day on which the vote occurs, report the matter to the Senate for its consideration.

"(5) One hour after the Senate convenes on the fourth day on which the Senate is in session following the day on which any such matter is reported to the Senate, or at such earlier time as the majority leader and the minority leader of the Senate jointly agree upon in accordance with section 133(f) of the Legislative Reorganization Act of 1946, the Senate shall go into closed session and the matter shall be the pending business. In considering the matter in closed session the Senate may—

"(A) approved the public disclosure of all or any portion of the information in question, in which case the committee shall publicly disclose the information ordered to be disclosed,

"(B) disapprove the public disclosure of all or any portion of the information in question, in which case the committee shall not publicly disclose the information ordered not to be disclosed, or

"(C) refer all or any portion of the matter back to the committee, in which case the committee shall make the final determination with respect to the public disclosure of the information in question.

"Upon conclusion of the consideration of such matter in closed session, which may no extend beyond the close of the ninth day on which the Senate is in session following the day on which such matter was reported to the Senate, or the close of the fifth day following the day agreed upon jointly by the majority and minority leaders in accordance with section 133(f) of the Legislative Reorganization Act of 1946 (whichever the case may be), the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by one or more of the means specified in clauses (A), (B), and (C) of the second sentence of this paragraph. Any vote of the Senate to disclose any information pursuant to this paragraph shall be subject to the right of a Member of the Senate to move for reconsideration of the vote within the time and pursuant to the procedures specified in rule XIII of the Standing Rules of the Senate, and the disclosure of such information shall be made consistent with that right.

"(c)(1) No information in the possession of the select committee relating to the lawful intelligence activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to subsection (a) or (b) of this section, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

"(2) The select committee may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee which, receives any information under this subsection, shall disclose such information except in a closed session of the Senate.

"(d) It shall be the duty of the Select Committee on Standards and Conduct to investigate any unauthorized disclosure of intelligence information by a Member, officer or employee of the Senate in violation of subsection (c) and to report to the Senate concerning any allegation which it finds to be substantiated.

"(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct de-

[3] Inclusion of this provision was specifically requested by the Chairman and Ranking Minority Member of the Committee on Foreign Relations. Letteh from Senator Church and Senator Javits to Senator Bayh and Senator Goldwater. Apr. 30, 1980.

termines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee."

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. HUDDLESTON. I yield.

Mr. PROXMIRE. Mr. President, the Senator just told the Senate what the vote was on the bill as it passed initially, 89 to 1. I was the one who voted against the bill. I did so without an explanation at that time to the Senate. I did so, however, with the very, very strong feeling that it was a serious mistake. It not only kills the Hughes-Ryan proposal but everyone who carefully reads that bill can see that the reporting to Congress is entirely within the discretion of the head of the CIA and the President.

I feel that was an abdication that I could not possibly accept, but I did not make a fuss about it, of course, when it came up before the Senate. It would not have made any difference, but that was my position, and it is still my position, and I oppose the amendment as I did that time.

Mr. BAKER. Mr. President, I wish to report that on this afternoon I talked with the Senator from Arizona (Mr. GOLDWATER), who is the senior Republican on the Intelligence Committee and its vice chairman. He cannot be present in the Senate Chamber tonight, and he asked me to convey to the distinguished chairman of the committee, the Senator from Indiana, and the chairman of the subcommittee, the Senator from Kentucky, his full concurrence and agreement with this procedure, including the amendment which has just been offered and the insertion of a colloquy as an explanation.

Mr. HUDDLESTON. Mr. President, will the Senator from Indiana yield for just 1 minute?

Mr. BAYH. Yes.

Mr. HUDDLESTON. Mr. President, this amendment is identical to the bill, S. 2284, the Intelligence Oversight Act of 1980, which the Senate passed on June 3 of this year by a vote of 89 to 1. The only difference is a matter of form.

The purpose of the amendment to this annual authorization bill for intelligence activities is to insure that the Congress acts in this session to provide the necessary intelligence oversight authorities for the Intelligence Oversight Committees to carry out the Senate's mandate as expressed in Senate Resolution 400 and by the Senate on June 3 in its 89-to-1 vote. These authorities should be promptly enacted into law either in this amendment form or as passed in S. 2284.

It is the expressed, almost unanimous judgment of the Senate that these principles are vital to any legislation that would seek to clarify the procedures for congressional oversight of intelligence activities. There must be comprehensive and balanced provisions that both enhance the strength and security of our intelligence community and insure that the Congress maintains strong and effective oversight of necessarily secret intelligence activities in accordance with the Constitution.

Since this amendment incorporates S. 2284 as passed by the Senate, the legislative history of that bill as found in the Intelligence Committee's report and the floor discussions of June 3, 1980, should be viewed as applicable to this amendment as well. At the time of its passage, questions were raised about the meaning and intent of certain provisions in S. 2284, and about the language of the report which accompanied it.

At that time, a number of clarifications and assurances were given by the leadership of the Intelligence Committee in colloquies with Senator JAVITS, Senator YOUNG, and Senator NUNN, including the assurance of certain changes in the language of the report which were incorporated into a star print. Since both the clarification given on the floor and the changes made in the report are an essential part of the Senate's understanding and intentions in passing this legislation, I ask unanimous consent that the entire text of these June 3 colloquies on S. 2284 and of the substantive portions of the star print of the committee report (S. Rept. No. 96-730) appear in the RECORD at this point and be considered as the authoritative legislative history of this amendment.

I would like to ask unanimous consent that this amendment, which is identical to S. 2284, be added to S. 2597, the Intelligence Authorization Act for Fiscal Year 1981.

Mr. BAYH. Mr. President, this is the fourth annual authorization bill put before the Senate by the Select Committee on Intelligence. It provides the authority for the conduct of intelligence efforts by the United States throughout the world.

The national intelligence system is our first line of defense. In conjunction with our diplomatic efforts, intelligence offers the best means of enhancing our national well-being; advancing our influence in the world; and of protecting the Nation from the dangers of attack, war, or other hostile actions.

The moneys that are to be spent for maintaining and improving our intelligence capabilities have been rigorously scrutinized by the committee, particularly under the guidance of Senator DANIEL K. INOUYE, chairman of the select committee Subcommittee on Budget Authorization. It is a budget aimed at improving our ability to collect and analyze information of direct relevance to our foreign policy and defense and to continue to improve our capability to offset efforts by hostile powers to weaken the position of the United States in the world.

The committee has also undertaken to add as an amendment to this bill the language of S. 2284, the National Intelligence Oversight Act of 1980, which passed the Senate on June 3, by a vote of 89 to 1. The House Permanent Select Committee on Intelligence has reported out a somewhat similar bill. It is our desire to assure that the Congress acts this year to provide the statutory authorities needed to carry out effective oversight. This amendment will assist that effort.

The purpose of the Oversight Act of 1980 was to provide the framework of checks and balances and shared responsibility necessary for the exercise of effective oversight of the intelligence agencies of the United States.

The language of the bill and the identical language of the amendment offered to S. 2597 by Senator HUDDLESTON on behalf of the committee was worked out in close consultation with the President, his chief advisers, the intelligence agencies, and the Senate committee. The language of the report explaining the purposes of the act was also written jointly.

The wording of the bill is based on Executive Order 12036 and Senate Resolution 400, by which instruments the President and the Senate provided authorities to exercise oversight and the experience of the oversight committees and the executive branch with each other over the past 4 years. It is intended to provide the checks and balances necessary to assure that the great powers that our vast intelligence system provides remain within the governance of our Constitution.

We are seeking to meet the standard called for by James Madison, in Federalist 48, by providing "a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands,' and to do this by enabling the respective branches "to be so far connected and blended as to give each a constitutional control over the others."

The effort to legislate effective means of oversight that will serve as a constitutional means of checks and balances and shared responsibility, not unexpectedly, has met with resistance and obstacles have been encountered at every step of the way.

This is understandable because the problems that arise in framing authority for effective oversight all involve the interaction of powers conferred by the Constitution on respective branches. In almost every case the powers of the two branches come into contact, sometimes collide, and on rare occasions come into confrontation with one another.

Recognizing this, we have sought to respect the authorities, powers, duties, and obligations of the branches and to devise ways in which solutions may be obtained rather than to create the certainty of confrontations.

Working under authorities given to the committee by the Senate in Senate Resolution 400 and under terms very similar to that of the Intelligence Oversight Act of 1980, and this amendment over the past 4 years, the Senate Intelligence Committee, and I believe that of the House, have been able to carry out their duties with full access to information. When information has been requested, it has been supplied and in the degree of detail required.

The Senate Intelligence Committee has not yet been required to issue a subpena to obtain information. We have received in almost every case the information needed when we want it.

This has sometimes required discussion and negotiation but we have never failed

to meet, discuss and negotiate when necessary. It is therefore imperative to assure that the means to work out solutions to difficulties that arise are encouraged. This was an underlying principle in the Intelligence Oversight Act of 1980.

A recent court case, *United States* v. *American Telephone & Telegraph Co.*, 567 F.2d 121 (D.C. Cir. 1977), is in essence the approach the committee has taken now to deal with conflicts of authority that might arise. This case raised many issues similar to those encountered in providing for the authorities of both branches for the governance of the intelligence activities of the United States. Two pasages from the case are of particular pertinence:

The framers, rather than attempting to define and allocate all governmental power in minute detail, relied, we believe, on the expectation that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient functioning of our governmental system. Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optional accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation. This aspect of our constitutional scheme avoids the mischief of polarization of disputes.

* * * * *

The course of negotiations reflects something of greater moment than the mere degree to which ordinary parties are willing to compromise. Given our perception that it was a deliberate feature of the constitutional scheme to leave the allocation of powers unclear in certain situations, the resolution of conflict between the coordinate branches in these situations must be regarded as an opportunity for a constructive modus vivendi, which positively promotes the functioning of our system. The Constitution contemplates such accommodation. Negotiation between the two branches should thus be viewed as a dynamic process affirmatively furthering the constitutional scheme.

The language of the Oversight Act was written with these thoughts in mind to try and avoid the "mischief of polarization of disputes" and to create the most favorable circumstances for working out conflicts of authority through accommodation achieved by "a realistic evaluation of the needs of the conflicting branches in the particular fact situation."

Mr. President, I want to commend the efforts of Vice Chairman Senator BARRY GOLDWATER, of Senator INOUYE and Senator HUDDLESTON, and of all of the members of the committee for their determination to make effective oversight an appropriate application of what was intended by our constitutional system of checks and balances.

I would like to offer my congratulations and my deep appreciation to the first chairman of the Select Committee on Intelligence, the distinguished Senator from Hawaii, who has done a professional job, held lengthy hearings and is presenting a good bill.

I would also like to express our appreciation to the Senator from Mississippi for the way in which the Armed Services Committee and the Intelligence Committee in the Senate continue to work in harmony, as they should, and without his efforts and the efforts of the Senator from Hawaii this would not be the case.

Lastly, I would like to offer my special word of appreciation to our distinguished colleague from Kentucky who has labored mightily on this whole question of the charter. We are here, I think, with all respect to a contrary assessment of our good friend from Wisconsin, and I think we are taking a significant step, not a vital step by any means but a significant step, toward making the intelligence community more efficient through the repeal of Hughes-Ryan on one side and providing the first recognition of the importance of congressional oversight on the other.

This has been a very, very frustrating experience, I do not think I have been involved in anything which has been so frustrating. You think you had an agreement and they compromise and then you start out from where the Senate was and you move toward where the folks downtown were.

Without reliving all of those negotiations, I think this is better than where we are. It is not where I hope we can go, but without the strong leadership of the Senator from Kentucky, the chairman of that subcommittee on oversight we would not be here where we are today, and I want to express my appreciation and urge my colleagues to accept this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment (UP No. 1361) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and to be read a third time.

The bill was read the third time.

The bill (S. 2597), as amended, was passed as follows:

S. 2597

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1981".

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. (a) Funds are hereby authorized to be appropriated for fiscal year 1981 for the conduct of intelligence activities of the following departments, agencies, and other elements of the United States Government:

(1) The Central Intelligence Agency and the Director of Central Intelligence.
(2) The Departmentof Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The Drug Enforcement Administration.

(b) The amounts authorized to be appropriated under this Act for the conduct of the intelligence activities of the agencies listed in subsection (a) are those listed in the classified Schedule of Authorizations for fiscal year 1981 prepared by the Select Committee on Intelligence. That Schedule of Authorizations shall be made available to the Committee on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

(c) Nothing contained in this Act shall be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

TITLE II—INTELLIGENCE COMMUNITY STAFF

SEC. 201. (a) There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1981 the sum of $18,700,000.

(b) For the fiscal year beginning October 1, 1980, the Intelligence Community Staff is authorized an end strength of two hundred and forty-five full-time employees. Such personnel may be permanent employees of the Intelligence Community Staff or employees on detail from other elements of the United States Government.

(c) Any employee who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that an employee may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary duties as required by the Director of Central Intelligence.

(d) Except as provided in subsections (b) and (c), the activities and personnel of the Intelligence Community Staff shall be administered by the Director of Central Intelligence in accordance with the provisions of the National Security Act of 1947 (50 U.S.C. 401, et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a–403j).

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1981 the sum of $55,300,000.

TITLE IV—GENERAL PROVISIONS

SEC. 401. Appropriations authorized by this Act for salary, pay, retirement and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

SEC. 402. Section 5 of the Central Intelligence Act of 1949 (50 U.S.C. 403f), is amended by adding at the end thereof the following new subsections:

"(f) Accept, hold, administer, and utilize for artistic or general employee or dependent welfare, educational, recreational or like purposes, gifts, bequests, or devises of money, securities, or other property whenever the Director determines such action would be in the interest of the United States to do so, but may not accept any gift which is expressly conditioned upon any expenditure not to be met from such money, securities, or other property or from the income thereof unless such expenditure has been approved by law. Unless otherwise restricted by the terms of the gift, bequest, or devise, the Director may sell or exchange, or invest or reinvest, such property in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Gifts, bequests, and devises of money, securities, and other intangible property accepted under the authority of this subsection, and the earnings and proceeds thereof, shall be deposited in a separate fund to be called the Central Intelligence Agency General Gift Fund and

shall be disbursed upon the order of the Director. For purposes of Federal income, estate and gift taxes, all gifts, bequests, and devices accepted by the Director shall be deemed to be to or for the use of the United States.

"(g) Grant such monetary or other relief as the Director in his sole and unreviewable discretion deems appropriate whenever an employee or former employee of the Agency is found by the Director to have suffered unjustified negative career development or an unjustified personnel or administrative action.".

SEC. 403. (a) Chapter 4, title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 140a. Foreign crytologic support.

"Funds made available to the Department of Defense for intelligence and communications purposes may be used to pay expenses of arrangements with foreign countries for cryptologic support. Such funds may be exchanged without regard to the prohibition contained in section 3651 of the Revised Statutes (31 U.S.C. 543).".

(b) The table of sections at the beginning of chapter 4 of such title is amended by adding at the end thereof the following new item:

"140a. Foreign cryptologic support.".

SEC. 404. (a) The Act of May 29, 1959 (73 Stat. 63) is amended by adding at the end thereof the following new sections:

"SEC. 9. (a) Funds of the National Security Agency may be used, with respect to a special limited class of its civilian and military personnel assigned outside the United States, to provide allowances and other benefits comparable to those authorized for officers and employees of the Foreign Service under clauses (1), (2), (7), (9), (10), and (11) of section 911 and sections 912, 914, 933, 941, 942, and 945 of the Foreign Service Act of 1946 (22 U.S.C. 1136 (1), (2), (7), (9), (10), and (11), 1137, 1138a, 1148, 1156, 1157, and 1160)).

"(b) Notwithstanding the provisions of section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), section 2675 of title 10, United States Code, or section 5536 of title 5, United States Code, the Director of the National Security Agency may—

"(1) rent or lease, for periods not exceeding ten years, such buildings and grounds outside the United States as may be necessary for the use of the National Security Agency; and

"(2) use such buildings and grounds to furnish personnel of such agency with living quarters, heat, light, and household equipment, without cost to such personnel, whenever the Director of the National Security Agency determines such action is in the public interest.

The Director of the National Security Agency may exercise the authority provided under this subsection only to the extent that funds have been appropriated for such purpose.

"SEC. 10. (a) In addition to the benefits provided in subsection 4109(a)(2)(B) of title 5, United States Code, the Director of the National Security Agency may provide allowances and other benefits to personnel assigned to training overseas for one year or longer to the same extent and for the same purposes for which such allowances and other benefits are provided employees of an agency under chapter 57 of title 5, United States Code.

"(b) In any case in which an employee of the National Security Agency received payment for training expenses under section 4109(a)(2)(B) of title 5, United States Code, before the date of enactment of this subsection and such payment was subsequently determined to have been improperly made as the result of an erroneous interpretation of such section, the Director of the National Security Agency may waive the collection of such erroneous payment, except that not more than a total of $50,000 in erroneous payments may be waived under this subsection.".

(b) the amendment made by subsection (a) shall become effective October 1, 1980.

SEC. 405. Section 3 of the Act of June 1, 1948 (40 U.S.C. 318), is amended by inserting "(a)" before "Upon" at the beginning of such section and by adding at the end of such section the following new subsection:

"(b) Upon request of the Director of the National Security Agency, the Administrator of General Services may detail special policemen appointed under the first section of this Act to provide protection for installations and grounds used by or under the control of the National Security Agency without regard to whether the United States has exclusive or concurrent criminal jurisdiction over such installations and grounds. Special policemen detailed to protect such installations or buildings shall have the same powers as special policemen appointed under the first section of this Act. The Administrator of General Services may extend the applicability of any regulation issued under section 2 to installations and grounds described in the first sentence of this subsection and to provide for the appropriate enforcement of such regulation.

SEC. 406. (a) The Director of Central Intelligence and the Director of the National Security Agency are authorized to pay a gratuity to the surviving dependent or dependents of any officer or employee of their respective agencies who dies as a result of injuries (excluding disease) sustained outside the United States. The amount of the gratuity in the case of any such officer or employee shall be an amount equal to one year's compensation at the rate such officer or employee was entitled to receive at the time of death. Such a payment shall be made only upon a determination of the Director of Central Intelligence in the case of an officer or employee of the Central Intelligence Agency, or of the Director of the National Security Agency, that the death of such officer or employee (1) resulted from hostile or terrorist activities, or (2) occurred in connection with an intelligence activity having a substantial element of risk. Any payment made under this subsection shall be considered a gift and shall be in addition to any other benefit payable from any source.

(b) A death gratuity payment made under subsection (a) shall be made to the person or persons within the following classes and in the order named:

(1) To the widow or widower, if living.

(2) If no widow or widower, to the child or children in equal shares, if living.

(3) If no widow, widower, child or children, to the dependent parent or dependent parents in equal shares who last bore that relationship, if living.

(c) As used in this section—

(1) The terms "widow", "widower", "child", and "parent" shall have the same meaning given to such terms by sections 8101 of title 5, United States Code.

(2) The term "United States" means the several States and the District of Columbia.

(d) The provisions of this section shall apply with respect to deaths occuring after June 30, 1974.

SEC. 407. (a) Part III of subtitle A of title 10, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 107.—GRANTING OF ADVANCED DEGREES AT DEPARTMENT OF DEFENSE SCHOOLS

"Sec.

"2151. Defense Intelligence School: degree.

"§ 2151. Defense Intelligence School: degree

"Under regulations prescribed by the Secretary of Defense, the Commandant of the Defense Intelligence School may, upon recommendation by the faculty of such school, confer the degree of master of science of strategic intelligence upon graduates of the school who have fulfilled the requirements for that degree.".

(b) The table of chapters at the beginning of subtitle A and of part III of subtitle A of such title are each amended by adding at the end thereof the following:

"107. Granting of Advanced Degrees at Department of Defense Schools ---------- 2151.".

SEC. 408. A new section, section 407, is added to the Intelligence Authorization Act for Fiscal Year 1981.

"SEC. 407. PRESIDENTIAL FINDINGS AND CONGRESSIONAL OVERSIGHT FOR INTELLIGENCE ACTIVITIES.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States. Each such operation shall be considered a significant anticipated intelligence activity for the purposes of subsections (b) through (e) of this section.

"(b) To the extent consistent with all applicable authority and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

"(1) keep the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the 'Select Committees') fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States, including any significant anticipated intelligence activity, except that (A) the foregoing provision shall not require approval of the Select Committees as a condition precedent to the initiation of any such anticipated intelligence activity, and (B) if the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairman and ranking minority members of the Select Committee, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate;

"(2) furnish any information or material concerning intelligence activities which is in the possession, custody or control of any department, agency, or entity of the United States and which is requested by either of the Select Committees in order to carry out its authorized responsibilities; and

"(3) report in a timely fashion to the Select Committee any illegal intelligence activity or significant intelligence failure and any corrective action that has been taken or is planned to be taken in connection with such illegal activity or failure.

"(c) The President shall fully inform the Select Committee in a timely fashion of intelligence operations in foreign countries other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (b) and shall provide a statement of the reasons for not giving prior notice.

"(d) The President and the Select Commit-

tees shall each establish such procedures as may be necessary to carry out the provisions of subsections (b) and (c).

"(e) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the Select Committees or to Members of the Congress under this section. In accordance with such procedures, each of the Select Committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

Mr. PROXMIRE. Mr. President, I want to make sure, although this was passed without objection, that I am recorded as voting against the amendment.

Mr. INOUYE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Orders Nos. 836, 902 and 903.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, once again the reservation is for the purpose of advising the majority leader that all three calendar items identified by him are cleared on our side.

It is my understanding that committee technical amendments are contained in Calendar Order 836 and I have an amendment that I wish to offer on behalf of the Senator from Kansas (Mrs. KASSEBAUM) and otherwise we have no objection.

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

EMPLOYEE PROTECTION AND RAILROAD FINANCING MODIFICATION ACT OF 1980

The Senate proceeded to consider the bill (S. 2530) to improve the fairness and equity of the protection provided to railroad employees under title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.), which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Employee Protection and Railroad Financing Modification Act of 1980".

TITLE I—EMPLOYEE PROTECTION

FINDINGS AND PURPOSE

SEC. 101. (a) The Congress finds that the original provisions designed to protect railroad employees under title V of the Reigonal Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) against deprivation of employment and reductions in railroad-related compensation contain inequities; that these inequities hinder the Consolidated Rail Corporation from achieving improved management of certain protected employees in its work force; and that elimination of these inequities would help reduce the cost levels of the Consolidated Rail Corporation, and thereby improve the Corporation's ability to provide carriage of goods in interstate commerce.

(b) It is declared to be the purpose of the Congress in this title to foster fair and equitable labor protection for certain railroad employees; to foster improvements in the ability of the Consolidated Rail Corporation to manage productively such employees in its work force; and to help reduce the cost levels of the Consolidated Rail Corporation by eliminating the inequities of the labor protection provisions, thereby improving the Corporation's abaility to provide carriage of goods in interstate commerce by—

(1) revising the cash allowances for protected employees under title V of the Regional Rail Reorganization Act of 1973 to ensure that the employees receive a reasonable level of protection; and

(2) improving the ability of the Consolidated Rail Corporation to train or retrain certain protected employees for bona fide job vacancies.

(c) Nothing in this title is intended to affect any law, regulation, court order, or obligation pertaining to equal employment opportunity.

MONTHLY DISPLACEMENT ALLOWANCE

SEC. 102. Section 505(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(b)) is amended to read as follows:

"(b) MONTHLY DISPLACEMENT ALLOWANCE.—A protected employee shall be paid a monthly displacement allowance for any calendar month within the period identified in subsection (c) of this section in which the employee is deprived of employment or adversely affected with respect to his or her compensation, in accordance with the following:

"(1) PROTECTED EMPLOYEES OCCUPYING POSITIONS IN THE NONOPERATING CRAFTS.—Effective on and after the first day of the months immediately following the date of enactment of the Employee Protection and Railroad Financing Modifiaction Act of 1980, the protected rate of pay of a protected nonoperating employee (other than a maintenance-of-way employee) who has been deprived of employment or adversely affected with respect to his or her compensation shall be based on the rate of pay of the position held by the employee on September 1, 1979, or if the employee held no position on that date, the rate of pay of the last position held by the employee prior to that date. A guaranteed hourly rate of pay will be computed for each protected employee, based on the aforesaid rate, and will be the actual hourly rate for hourly rated employees; the daily rate divided by 8 for daily rated employees; and the monthly rate divided by the working days in the claim month, further divided by 8 in the case of monthly rated employees. For employees occupying relief positions, the guarantee shall be computed on the basis of the weighted average daily rate of the position relieved. Extra list employees will be guaranteed the extra list rate.

"(A) In the event a protected employee's position is abolished or he or she is displaced, and the employee is thereby required to occupy a position paying a lesser hourly rate than the employee's guaranteed hourly rate, the protected employee shall be paid the difference between the hourly rate of pay of the position the employee is occupying and his or her guaranteed hourly rate for all hours included in the straight-time work schedule of the employee's position for the month of claim, less any time lost on account of voluntary absences other than vacations. Hours worked in excess of the straight-time work schedule shall be paid in addition to the guarantee at the rate applicable to the position occupied, as provided for in the applicable collective bargaining agreement.

"(B) For any month or portion thereof in which a protected employee is deprived of employment, the protected employee shall be paid his or her guaranteed hourly rate for the number of hours the employee would have worked in the straight-time work schedule of his or her previously held position.

"(C) Notwithstanding the provision that the protected rate shall be the rate of the position held on or immediately preceding September 1, 1979, if a protected employee becomes the permanent incumbent of a higher rated position and is not disqualified from the higher rate shall become his or her protected rate.

"(2) PROTECTED EMPLOYEES OCCUPYING POSITIONS IN THE MAINTENANCE-OF-WAY CRAFTS.—Notwithstanding subsection (b)(1), effective on and after the first day of the month immediately following the date of enactment of the Employee Protection and Railroad Financing Modification Act of 1980, a protected maintenance-of-way employee shall be afforded his or her average monthly compensation computed in accordance with section 505(b) prior to such date (as used in this subsection (b), 'average monthly compensation'), but subject to a 'maximum', which maximum is defined as the employe's average monthly compensation divided by his or her average monthly time paid for, and further multiplied by 174 hours, or by his or her average monthly time paid for, whichever is less. If the average monthly compensation of a protected maintenance-of-way employee exceeds the maximum, the average monthly compensation of the employee will be reduced to the maximum for purposes of computing the employee's monthly displacement allowance, if any. If a protected employee is deprived of employment or if the employee's compensation in his or her current position is less in any month than the employee's average monthly compensation or the maximum, whichever is smaller, the employee shall be paid 75 percent of the difference between his or her earnings if any and the smaller figure, less any time lost on account of voluntary absences other than vacations. If, at the close of the calendar year, the sum of the protected employee's annual compensation (excluding overtime compensation earned by virtue of actually working in excess of 2 hours at the punitive rate of pay on any given day), monthly displacement allowance payments, and offsets applicable pursuant to this title is less than the employee's average monthly compensation subject to the maximum and multiplied by 12, the employee shall receive an additional payment representing the difference. In the computation of the monthly and the annual displacement allowance payments, earnings shall not include compensation received for overtime actually worked in excess of 2 hours at the punitive rate of pay on any given day. If in the previous calendar year an employee has received displacement allowance payments in excess of his or her annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by section 505 (g) of this title.

"(3) PROTECTED EMPLOYEES OCCUPYING POSITIONS IN THE OPERATING CRAFTS.—Effective on and after the first day of the month immediately following the date of enactment of the Employee Protection and Railroad Financing Modification Act of 1980, a protected operating employee (defined as any protected employee in ICC classifications 107 through 128) who has been deprived of employment or adversely affected with respect to his or her compensation shall be afford-