Mr. President, no appropriations have been provided for fiscal year 1985 to cover such expenses, and the 1985 fiscal year begins on October 1, 1984. It is imperative that we pass this legislation so that we do not disrupt the marketing and distribution of U.S. grain. Also, passage of the bill will ensure annually savings of taxpayers' dollars totaling over $13 million a year for each of the next 4 years.

Mr. President, there are several other changes in current law incorporated in H.R. 5221. The measure increases the cap on administrative and supervisory cost from 35 to 40 percent of total inspection costs. Retention of the cap at 40 percent will promote effective management of the grain inspection and weighing programs and still provide an effective limit on agency growth.

Another provision which is extended by the bill is the requirement for the establishment of an advisory committee constituted of experts in the industry to advise the Administrator of FGIS on the implementation of the United States Standards Act. I believe that the beneficial work of the Advisory Committee should be continued.

Under current practice, the FGIS revolving fund, consisting of user fees paid for services rendered to the grain industry, has been maintained in a U.S. Treasury account until needed by FGIS to pay its operating expenses. H.R. 5221 would allow the Secretary of Agriculture to invest user fee moneys collected from the industry in insured or fully collateralized, interest-bearing accounts or in U.S. Government debt instruments. This change would result in grain industry paid user fees being treated in a manner similar to user fees collected by the Government in connection with warehouse examination programs, as well as cotton classing and various other inspection or grading programs for agricultural commodities such as meat, poultry, eggs, fruits, and vegetables under the Agricultural Marketing Act of 1946. This change would put the grain inspection and weighing program on a basis comparable with these other programs, provide additional revenues for FGIS operations, and reduce the need for the agency to increase user fee charges or request additional appropriations.

Finally, the bill prohibits the establishment of a new class of wheat, designated "Red Wheat," as was proposed by the Administrator of the Federal Grain Inspection Service in volume 49 of the Federal Register, pages 1730-35, on January 13, 1984. The concern is that establishing this new class of wheat could result in some types of Hard Red Winter Wheat being discounted to a lower price. Representatives of the grain industry have stated that establishment of an eighth wheat class would disrupt the wheat market. I would like to note that the Department of Agriculture indicated in a notice published in the Federal Register on May 16, 1984, that the Department had decided not to establish a new "Red Wheat" class as previously proposed.

Mr. President, implementation of user fees, and input by the Advisory Committee, have resulted in increased efficiency of program administration as well as a more cost-effective delivery of program services. Passage of H.R. 5221 will maintain efficiency in the national grain inspection and weighing system and maintain the quality of grain exported from the United States. I urge its passage.

Mr. HUDDLESTON. Mr. President, H.R. 5221 would extend, for 4 years, the current grain inspection and weighing user fee system.

The current fee system was implemented as a result of changes in the law—effective for the 1982 through 1984 fiscal years—made by the Omnibus Budget Reconciliation Act of 1981. Without action by Congress, the authority for the current system provided in the 1981 legislation will end this Sunday, September 30.

The most important change in the fee system made in 1981 was to require the Federal Grain Inspection Service to collect reasonable fees to cover the Service's costs incurred in supervising grain inspection and weighing. These fees, together with the fees charged by the service for inspection and weighing performed by the Service itself, have enabled the Service to cover the bulk of its costs with funds paid by the users of grain inspection and weighing services.

The administration supports an extension of the current user fee system and has requested that enabling legislation be enacted.

The bill would also increase—from 35 percent to 40 percent—the portion of Federal Grain Inspection Service expenditures that can be devoted to administration and supervision, while extending the percentage limitation for 4 years. The increase in the limitation has been made necessary by the substantial reduction in grain exports in recent years. The supervision program overseeing the national grain inspection and weighing system has substantial fixed costs that should be maintained, even though Federal inspections and weighing activities are down temporarily. The grain trade has indicated a willingness to accept this increase.

The bill would extend—for 4 years—the requirement for the establishment of an advisory committee of industry experts to advise the Government on the implementation of the U.S. Grain Standards Act. The advisory committee has served the Federal grain inspection and weighing program well, and the beneficial work it does should be continued.

The bill would authorize the Secretary of Agriculture to invest moneys of the grain inspection and weighing user-fee fund in interest-bearing accounts. This will result in grain industry-paid user fees being treated in a manner similar to user fees collected in connection with other Federal inspection or grading programs for agricultural commodities. It will also provide additional revenues for Federal Grain Inspection Service operations and reduce the need for the agency to increase user charges or request additional appropriations.

Mr. President, the efficient operation of the national grain inspection and weighing system is important to U.S. farmers. This system is essential to the orderly and timely marketing of grain, and provides assurances to our foreign customers as to the quality and quantity of grain they purchase.

I urge the Senate to act expeditiously on this bill to avoid any possible disruption of the Federal Grain Inspection Service's supervisory operations or the smooth functioning of the national inspection and weighing system.

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

The bill was read the third time and passed.

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

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

The motion to lay on the table was agreed to.

CONSIDERATION OF CERTAIN ITEMS ON THE CALENDAR

Mr. STEVENS. Mr. President, I call the attention of the Democratic leader to Calendar No. 1221 and Calendar No. 1250.

Mr. BYRD. There is no objection.

Mr. STEVENS. 1251.

Mr. BYRD. No objection.

Mr. STEVENS. 1252.

Mr. BYRD. No objection.

Mr. STEVENS. 1255.

Mr. BYRD. There is no objection.

Mr. STEVENS. 1256.

Mr. BYRD. There is no objection.

Mr. STEVENS. 1257.

Mr. BYRD. There is no objection.

CENTRAL INTELLIGENCE AGENCY INFORMATION ACT

The Senate proceeded to consider the bill (H.R. 5164) to amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

Mr. GOLDWATER. Mr. President, I rise in strong support of H.R. 5164, the Central Intelligence Agency Information Act. The purpose of this legislation is to amend the National Security Act of 1947 in order to relieve the Central Intelligence Agency of the unproductive burden of searching and reviewing certain operational files under the Freedom of Information Act. This relief will enable the CIA to become more efficient so that requests under

the provisions of the Freedom of Information Act may be answered more quickly.

BACKGROUND OF LEGISLATION

On June 21 and June 28, 1983, the Senate Select Committee on Intelligence held open hearings on S. 1324—the counterpart legislation to H.R. 5164. The Central Intelligence Agency, American Bar Association, American Civil Liberties Union, Association of Former Intelligence Officers, newspaper publishers, historians and journalists were all there to provide their comments on this bill. We listened to them carefully then we worked hard to combine all their special concerns into one piece of legislation.

The work in our committee included extensive staff and member consultations with CIA representatives. The end result was that even those Senators who expressed the greatest concern about the risk of excessive secrecy signed a joint statement supporting S. 1324, as it was amended in the course of committee debate. The statement, signed by Senators DURENBERGER, HUDDLESTON, INOUYE, and LEAHY, said in part:

We are satisfied that S. 1324 will serve not just the CIA's interest in preserving secrecy about sensitive intelligence operations, but the public's right to information about their Government. For these reasons we urge favorable Senate action on the bill.

Following our open hearings on this subject S. 1324 was reported unanimously from the Senate Intelligence Committee. Every single Senator on the committee voted in favor of this legislation. Subsequently, on November 17, 1983, this bill was passed unanimously by voice vote by the full Senate.

SECURITY CONCERNS

Mr. President, presently the Freedom of Information Act mandates that when someone requests information from the CIA on a certain subject, all CIA files containing such information have to be searched. Obviously, most responsive information in operatinal files is properly classified. But that does not end the Agency's job. An experienced person must go through stacks and stacks of these papers—sometimes they are many feet tall—to justify why almost every single sentence shoud not be released. If this is not done properly, a court could order the information released.

However, in the past, very little information has been released from CIA operational files, which are used to store information concerning the sources and methods used to collect intelligence. Even when information is released, it is fragmented and difficult to understand.

Also, there is always the risk there will be a mistake in disclosure or that some court could order the release of information which might unintentionally reveal a source's identity or liaison relationship. This is why these most sensitive operational files—and only such files—would be exempt from search and review under the provisions of this bill.

GREATER EFFICIENCY IN PROCESSING

In return for this exemption, requesters under the Freedom of Information Act are going to get something as well. They are expected to get better service.

I have talked with officials of the Central Intelligence Agency and they have agreed not to reduce the budgetary and personnel allocations for Freedom of Information Act processing for 2 years immediately following passage of this bill. This means that, to the extent that resources are freed up as a result of this legislation, the Agency would utilize those sources to reduce the backlog of FOIA requests.

HOUSE ACTION ON H.R. 5164

Mr. President, on September 19, 1984, the House of Representatives, by a vote of 369 to 36, passed H.R. 5164, which has the same basic features as S. 1324. I think the overwhelming bipartisan support for this legislation demonstrates that this is a bill whose time has come. H.R. 5164 will effectively end a debilitating waste of resources without significantly diminishing the proper public release of information about the CIA. It will enable the CIA to respond more quickly and more efficiently to Freedom of Information Act requests. This legislation will also positively contribute to security in the conduct of intelligence activities.

Finally, a bipartisan House amendment to the legislation makes clear that the Privacy Act is not a nondisclosure statute displacing the disclosure provisions of the Freedom of Information Act. This provision restores the relationship between the Freedom of Information Act and the Privacy Act which was intended by the Congress when it considered both statutes in 1974.

During House debate on this legislation in March of this year, Representative WHITEHURST of Virginia, stated that "We have forged a bipartisan consensus on legislation to modify the application of the Freedom of Information Act to the Central Intelligence Agency." Representative WHITEHURST went on to say:

The bill is carefully crafted to achieve three purposes.

First, the bill will relieve the CIA from an unproductive FOIA requirement to search and review certain specifically defined CIA operational files consisting of records which, after line-by-line security review, almost invariably prove not to be releasable under the FOIA.

Second, the bill will provide more effective security for the identities and operational activies abroad of individuals who risk their lives and livelihoods to assist the United States by cooperating with the Central Intelligence Agency.

Third, the bill will improve the ability of the CIA to respond to FOIA requests from the public in a timely and efficient manner, while preserving undimished the amount of information releasable to the public under the FOIA.

ADMINISTRATION POSITION

The Director of Central Intelligence has told us that H.R. 5164, as passed by the House of Representatives, will make an important contribution to the safeguarding of intelligence sources and methods. He also has said it will improve CIA responsiveness to Freedom of Information Act requests. The administration supports Senate acceptance of H.R. 5164 as passed by the House, and this is also the position of the American Civil Liberties Union.

I urge my colleagues to join me, Vice Chairman MOYNIHAN, and other members of the Senate Intelligence Committee in voting in favor of this legislation without amendment. I hope that we do not lose this opportunity to enact an important piece of legislation which will simultaneously enhance intelligence effectiveness and further the aims of the Freedom of Information Act.

In closing, I want to thank Senator THURMOND, the distinguished chairman of the Judiciary Committee, for his support in cointroducing this legislation last year. As well, I want to thank Senators MOYNIHAN, CHAFEE, DURENBERGER, HUDDLESTON, and LEAHY for their time and interest in helping the committee to reach agreement on this bill. Finally, I want to thank Senator HATCH for his help and understanding in getting this legislation to the floor at this late date in this session.

Once again, I urge my colleagues to support this important legislation.

Mr. HUDDLESTON. Mr. President, the Senate passage today of the Central Intelligence Agency Information Act will mark the end of a long and difficult effort by several of us on the Intelligence Committee to find a way to help the CIA with some of its problems under the Freedom of Information Act. It has taken over 5 years since CIA Director Stansfield Turner came to us with the proposal to exempt the CIA's most sensitive operational files from search and review under the FOIA.

The intelligence charter legislation which I introduced as the National Intelligence Act of 1980 included this proposal. Although the charter was not enacted, several of its provisions have become law as separate legislation since 1980. The CIA Information Act carries on the process of building a new framework for a strong and effective CIA that continues to respect the principles of our free society.

The fact that this bill is fully supported by the CIA, the administration, and the American Civil Liberties Union makes it an extraordinary achievement. Great credit is due to Senator GOLDWATER who, as chairman of the Intelligence Committee, recognized over a year ago that the time had come to reach an agreement between the CIA and those concerned about public access to Government information,

Two individuals should be singled out for their role in breaching the barriers that appeared to block legislative action on this problem. They are Mr. Mark Lynch of the American Civil Liberties Union and Mr. Ernest Mayerfeld of the Central Intelligence Agency, outstanding lawyers who vigorously represented opposing viewpoints and successfully framed the basic elements of a bill that could serve the interests of both sides.

The broad consensus that has developed in support of this legislation reflects the bipartisan approach that the Intelligence Committee has consistently taken, over the years since the Select Committee was established. For this bill to work its way through the House and Senate, it was important to have an Intelligence Committee in each body that could work closely with other committees and members to accommodate their concerns.

It is my hope that the two Intelligence Committees can, in the years ahead, continue addressing the practical problems of our intelligence community in the same manner.

As a result of this legislation, the American people should have greater confidence that the men and women who serve their Nation at the CIA are fully committed to the maintenance of our open society. As the committee reports on H.R. 5164 and S. 1324 state,

> The Agency's acceptance of the obligation under the FOIA to provide information to the public not exempted under the FOIA is one of the linchpins of this legislation. The Act has played a vital part in maintaining the American people's faith in their government, and particularly in agencies like the CIA that must necessarily operate in secrecy. In a free society, a national security agency's ability to serve the national interest depends as much on public confidence that its powers will not be misused as it does on the confidence of intelligence sources that their relationships with the CIA will be protected.

The CIA Information Act is an outstanding legislative accomplishment that should meet both the CIA's need to reassure its sources and the public's need for improved CIA responsiveness to FOIA requests. Therefore, I strongly urge the Senate to pass H.R. 5164 and express my thanks to all those who have worked so hard on this legislation.

Mr. LEAHY. Mr. President, I am indeed pleased that the Senate is accepting the House revisions to the Central Intelligence Agency Information Act. This means that the important legislation will soon become law. Two major goals will be accomplished: The Central Intelligence Agency will be relieved of the obligation to search and review its sensitive operational files, from which it almost never releases information in response to Freedom of Information Act requests. At the same time, relief from this obligation will enable the CIA to respond in a more timely way to FOIA requests not involving its operational files. Thus, both the CIA and the user of FOIA will benefit.

When S. 1324 first came to the Select Committee on Intelligence for hearings, I had considerable reservations about it. In fact, I doubted that it could, in its original form, pass the Senate. Nevertheless, I believed the basic arguments made by the CIA in support of the bill made sense. The Agency said that the FOIA requirement that it search and review its operational files, which contain the most sensitive data on intelligence sources, broke down the vital compartmentation necessary to protect the identities of sources. Moreover, the Agency said that it virtually never releases information from its operational files, and never any significant information. Yet, the requirement to search and review those files contributed greatly to the growing backlog of FOIA cases of the Agency. Relief from the search and review of operation files would thus not only improve security, but would improve the CIA's FOIA performance.

The fact that the ACLU shared the CIA's views also indicated that, with some improvements and modifications, S. 1324 could be made acceptable to those of us who believe the FOIA is an indispensable bulwark of the public's right to know what their government is doing. In an intensive series of meetings with representatives from the ACLU, CIA, Department of Justice, press groups and others, I and other members of the Select Committee on Intelligence worked to amend the original language. We were successful, thanks in large part to the constructive attitude of the CIA, ACLU representatives, and others from private interest groups, as well as the leadership of several members of the Select Committee on Intelligence.

When S. 1324 went to the House, further changes were made. In my judgment, these House amendments have additionally strengthened the bill's protections against misuse of the exemption being granted the CIA from search and review of its operational files. The Central Intelligence Agency Information Act will provide that FOIA may still be used by individuals to request any information held by the CIA on themselves. It will permit continued search and review of files on covert actions where the existence of the operation is not exempt from disclosure under the FOIA. It will also permit continued search and review of matters which are the subject of official investigations for illegality or impropriety. The bill also continues the present FOIA standard for judicial review. Finally, in an important amendment introduced in the House, the bill prohibits the use of the Privacy Act as a basis for nondisclosure under section (b)(3) of the FOIA. This closes a potential loophole created by recent ambiguous court decisions.

Mr. President, this is an important piece of legislation, which I believe will serve the interests of both the Central Intelligence Agency and the public. It has come a long way since it was first introduced and referred to the Select Committee on Intelligence. I am pleased to have been a part of the process which led to its present form.

I also want to applaud the efforts of Eric Newsom and John Podesta of my office for their help.

I am well aware of the hours and hours they spent negotiating in my conference room, with all the parties involved. The final product was worth it.

The bill was ordered to a third reading, read the third time, and passed.

CONVEYANCE OF CERTAIN REAL PROPERTY

The bill (S. 2721) to confirm a conveyance of certain real property by the Southern Pacific Transportation Company to Ernest Pritchett and his wife, Dianna Pritchett, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2721

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to section 3, the conveyance described in section 2(a) of this Act involving certain real property in Jackson County, Oregon, forming a part of the right-of-way granted by the United States to the California and Oregon Railroad Company under the Act entitled "An Act granting Lands to aid in the Construction of a Railroad and Telegrpagh Line from the Central Pacific Railroad, in California, to Portland, in Oregon", approved July 25, 1866 (14 Stat. 239), is confirmed in Ernest Pritchett and his wife, Dianna Pritchett, the grantees in such conveyance, and their successors in interest, with respect to all interests of the United States in the rights to the real property described in section 2(b) of this Act.

SEC. 2. (a) The conveyance confirmed by this Act was made by a deed dated July 23, 1982, by the Southern Pacific Transportation Company to Ernest Pritchett and his wife, Dianna Pritchett, and recorded on October 20, 1982, in the official records of Jackson County, Document Numbered 82-15174.

(b) The real property referred to in the first section of this Act is a parcel of land in the northwest quarter of section 26, township 36 south, range 4 west, Willamette Meridian, County of Jackson, State of Oregon, more particularly described as follows:

Commencing at the west quarter corner of such section 26; thence south 89 degrees 46 feet 45 inches east along the southerly line of such northwest quarter of section 26 a distance of 1082.50 feet to a point in a line parallel with and distant 100 feet northeasterly, measured at right angles, from the original located center line of Southern Pacific Transportation Company's main track (Siskiyou Branch), and also the true point of beginning of the parcel to be described; thence north 65 degrees 2 feet 35 inches west along such parallel line 1191.92 feet to the westerly line of such section 26; thence south zero degrees 12 feet 52 inches west

sary for America's to take a position of leadership in our foreign policy.

We can no longer continue the kind of misguided policy that has alienated many of our friends, policies that include the mining of the harbors in Nicaragua and the misguided support for the Contras against the Nicaraguan Government. It is a situation that has certainly not enhanced America's image in Central and South America.

We find ourselves in a position in which we have alienated many of our friends. America's position has deteriorated throughout Latin America and has, in effect, even strengthened the hands of the Soviets in the region. What we must do, as a nation, is see that we have a policy that is not simply reactive to the problems of endemic injustice, rampant hunger, and the crisis of overpopulation, but that is an activist policy that draws on the best of President Kennedy's ideas like the Peace Corps, and the Alliance for Progress.

CALL OF THE HOUSE

Mr. FOLEY. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 397]

Ackerman	Coleman (TX)	Fuqua
Akaka	Collins	Garcia
Albosta	Conable	Gejdenson
Anderson	Conte	Gekas
Andrews (NC)	Cooper	Gephardt
Andrews (TX)	Coughlin	Gibbons
Annunzio	Coyne	Gilman
Anthony	Craig	Gingrich
Aspin	Crane, Daniel	Glickman
Badham	Crane, Philip	Gonzalez
Barnard	Daniel	Goodling
Bartlett	Dannemeyer	Gore
Bateman	Darden	Gradison
Bates	Daschle	Gray
Beilenson	Daub	Green
Bennett	Davis	Gregg
Bereuter	Dellums	Guarini
Berman	Derrick	Gunderson
Bethune	DeWine	Hall (IN)
Bevill	Dickinson	Hall (OH)
Biaggi	Dixon	Hall, Ralph
Bilirakis	Dorgan	Hall, Sam
Bliley	Dowdy	Hamilton
Boehlert	Downey	Hammerschmidt
Boggs	Dreier	Hance
Bonior	Duncan	Hansen (ID)
Bonker	Durbin	Hansen (UT)
Borski	Dwyer	Harkin
Bosco	Dymally	Hartnett
Boucher	Early	Hatcher
Boxer	Eckart	Hayes
Breaux	Edwards (AL)	Hefner
Britt	Edwards (OK)	Heftel
Brooks	Emerson	Hertel
Broomfield	English	Hightower
Brown (CA)	Erdreich	Hiler
Brown (CO)	Erlenborn	Hillis
Broyhill	Evans (IA)	Holt
Bryant	Evans (IL)	Hopkins
Burton (CA)	Fascell	Horton
Burton (IN)	Fazio	Howard
Byron	Feighan	Hoyer
Campbell	Fiedler	Hubbard
Carney	Fields	Huckaby
Carr	Flippo	Hughes
Chappie	Foglietta	Hunter
Clarke	Foley	Hutto
Clay	Frank	Hyde
Clinger	Franklin	Ireland
Coats	Frenzel	Jacobs
Coelho	Frost	Jeffords
Jenkins	Molinari	Siljander
Jones (OK)	Mollohan	Sisisky
Jones (TN)	Montgomery	Skeen
Kaptur	Moody	Skelton
Kasich	Moore	Slattery
Kastenmeier	Morrison (WA)	Smith (FL)
Kazen	Murphy	Smith (IA)
Kennelly	Murtha	Smith (NE)
Kildee	Myers	Smith (NJ)
Kindness	Natcher	Smith, Denny
Kleczka	Nelson	Smith, Robert
Kogovsek	Nichols	Snowe
Kolter	Nielson	Snyder
Kostmayer	Nowak	Solomon
Kramer	O'Brien	Spence
LaFalce	Oakar	Spratt
Lagomarsino	Oberstar	St Germain
Lantos	Olin	Staggers
Latta	Ortiz	Stangeland
Leach	Owens	Stark
Leath	Oxley	Stenholm
Leland	Packard	Stokes
Lent	Panetta	Stratton
Levin	Parris	Stump
Levine	Pashayan	Sundquist
Levitas	Patman	Swift
Lewis (CA)	Patterson	Synar
Lewis (FL)	Paul	Tallon
Lipinski	Pease	Tauzin
Livingston	Penny	Taylor
Lloyd	Pepper	Thomas (CA)
Loeffler	Petri	Thomas (GA)
Long (LA)	Pickle	Torres
Lott	Price	Torricelli
Lowery (CA)	Pursell	Towns
Lowry (WA)	Quillen	Traxler
Lujan	Rahall	Udall
Luken	Rangel	Valentine
Lundine	Ratchford	Vander Jagt
Lungren	Ray	Vandergriff
Mack	Regula	Vento
MacKay	Reid	Volkmer
Madigan	Richardson	Vucanovich
Marlenee	Rinaldo	Walgren
Marriott	Ritter	Walker
Martin (IL)	Roberts	Watkins
Martin (NC)	Robinson	Weaver
Martin (NY)	Roe	Weber
Martinez	Roemer	Weiss
Matsui	Rogers	Wheat
Mavroules	Rose	Whitehurst
McCain	Rostenkowski	Whitley
McCandless	Roth	Whittaker
McCloskey	Roukema	Whitten
McCollum	Rowland	Wirth
McCurdy	Roybal	Wise
McDade	Rudd	Wolf
McEwen	Russo	Wolpe
McHugh	Sabo	Wortley
McKernan	Schaefer	Wright
McKinney	Schneider	Wylie
McNulty	Schroeder	Yates
Mica	Schumer	Yatron
Michel	Selberling	Young (AK)
Miller (CA)	Sensenbrenner	Young (FL)
Miller (OH)	Sharp	Young (MO)
Mineta	Shaw	Zschau
Minish	Shumway	
Moakley	Sikorski	

□ 1040

The SPEAKER. On this rollcall, 358 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

"NO" VOTE ON H.R. 5164 IS NEEDED

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, the American public first learned that the CIA spied on Martin Luther King, Jr., from documents obtained through the Freedom of Information Act. The same is true of the CIA's recruitment of American blacks in the late sixties and early seventies to spy on Black Panthers, and of the CIA's continued involvement with the National Student Association.

Enactment of the CIA Information Act (H.R. 5164), a bill we will be voting on later today, will make future discoveries of this nature and others that quickly come to mind more difficult—if not impossible.

H.R. 5164 would also dangerously intrude on the power of the courts to review CIA actions and both a plaintiff and the courts would be effectively prevented from forcing the CIA to disclose improperly withheld information.

Only a few months ago the CIA was caught withholding vital information from congressional Intelligence Committees regarding the mining of Nicaragua's harbors and at this very moment appear to have violated congressional prohibitions on transferring airplanes to the Contras for use over Nicaragua.

I believe the CIA requires not less, but even closer oversight by the Congress, the courts, and the American people. I urge my colleagues to join me in voting against an unjustified increase in secrecy.

ADMINISTRATION SAYS "NO" TO FAIR TRADE IN STEEL ACT

(Mr. KOSTMAYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KOSTMAYER. Mr. Speaker, yesterday the administration announced its long-awaited response to the steel industry's pleas for help. The President responded to the recommendations of his International Trade Commission that tough import restrictions were justified and needed.

President Reagan had the chance to say "yes" to 150,000 steelworkers who have lost their jobs since 1980—"yes, we will help."

He said, "No."

President Reagan had the chance to say "yes" to fairness and equity for an industry devastated by heavily subsidized imports.

He said, "No."

President Reagan had the chance to say "yes" to a plan, backed by both management and labor, to reinvest and revitalize a steel industry desperately in need of modernization.

He said, "No."

Mr. Speaker, the President got bad advice.

Over 200 Members of Congress, Republicans and Democrats, have cosponsored the Fair Trade in Steel Act. The bill lays out a moderate, fair, and responsible plan for 5 years of comprehensive import relief in return for a commitment by the industry to reinvest the capital generated back into plant modernization.

The President had the opportunity to implement this legislation himself. Since he has chosen not to, Mr. Speaker, I urge the Ways and Means to

the health and welfare of abused or neglected children, including instituting legal proceedings. The new clause (K) includes specific statutory reference to the authority to institute legal proceedings only because questions have occasionally been raised about the authority of particular child protective services agencies to take such actions in cases involving withholding of medically-indicated treatment from disabled infants with life-threatening conditions. Under new clause (K), States have the flexibility to determine the specific agency or agencies within their child protective services systems, to exercise that authority. State authority to utilize other agencies, in addition to the child protective services system, for these purposes would be unaffected by the legislation.

ADDITIONAL GRANTS TO STATES

The amendment (in section 201(c)(2)) would add a new subsection 4(c) to the Act to authorize the Secretary to make additional grants to the States for the purposes of developing, establishing, and operating or implementing (1) the procedures or programs required under the new clause (K), (2) information and education programs or training programs (for the purposes of improving the provision of services to disabled infants with life-threatening conditions) for professional and paraprofessional personnel concerned with the welfare of such infants, including personnel employed in child protective services programs and health-care facilities, and for parents of such infants, and (3) programs to help obtain or coordinate necessary services, including existing social and health services and financial assistance for families with disabled infants with life-threatening conditions as well as those services necessary to facilitate adoptive placement of such infants who have been relinquished for adoption.

REGULATIONS AND GUIDELINES

The amendment (in section 202) would direct the Secretary, within 90 days of the date of enactment, to publish for public comment proposed regulations to implement the requirements of the new clause (K), and to publish final such regulations within 180 days after enactment.

It also would direct the Secretary to publish, within 60 days after enactment, interim model guidelines to encourage the establishment within health-care facilities of committees which would serve the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions. Not later than 150 days after the date of enactment and after notice and opportunity for public comment, the Secretary would be required to publish the model guidelines.

REPORT ON FINANCIAL RESOURCES

The amendment (in section 203) would require the Secretary to conduct a study to determine the most effective means of providing Federal financial support other than the use of funds provided through the Social Security Act, for the provision of medical treatment, general care, and appropriate social services for disabled infants with life-threatening conditions and report the results of such study to the appropriate committees of the Congress not later than 270 days after the date of enactment. The report to the appropriate Committees would also be required to contain such recommendations for legislation to provide such financial support as the Secretary considers appropriate.

TRAINING, TECHNICAL ASSISTANCE AND CLEARINGHOUSE ACTIVITIES

The amendment (in section 204) would direct the Secretary to provide, directly or through grants or contracts with public or private nonprofit organizations, for training and technical assistance programs to assist states in meeting the requirements of new clause (K) and for establishing and operating national and regional information and resource clearinghouses to provide the most current and complete information regardingmedical treatment procedures and resources and community resources for services and treatment for disabled infants with life-threatening conditions. The funds tio carry out these activities would be provided from the funds, other than those funds made available for basic States grants under section 4(b)(1), otherwise available to the Secretary to carry out activities under the Act (meaning the Child Abuse Prevention and Treatment Act).

STATUTORY CONSTRUCTION

The amendment (in section 205) would provide that no provision of or any amendment made by the Act is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973.

It would also provide that no provision of or any amendment made by the Act may be construed to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws.

It would also contain a standard severability provision in the event that a particular provision of or any amendment made by the Act is declared unconstitutional by a court.

AUTHORIZATION OF APPROPRIATIONS

The amendment (in section 206) would increase the authorization of appropriations—from the levels in the bill as reported ($27 million for FY 1984, $34 million for FY 1985, $35.5 million for FY 1986, and $37.08 million for FY 1987)—under the Act by $5,000,000 for each fiscal year for the purpose of making the additional grants to the states to implement the provisions of new clause (K) and to establish the information and education and training programs and the programs to help obtain or coordinate necessary services for disabled infants with life-threatening conditions authorized under the new section 4(c)

The amendment would retain the earmark contained in S. 1003 as reported of $9,500,000 in each fiscal year for the carrying out of the provisions of section 4(b)(1), relating to basic state grants, and $4,000,000 in each fiscal year for identification, treatment, and prevention of sexual abuse.

It is the firm intention of the sponsors that appropriations for the new section 4(c) program should be in addition to appropriations at the authorization levels contained in the amendment for the section 4(b)(1) basic state grant program and for the sexual abuse, identification, treatment, and prevention program and that neither of these existing programs should be reduced in funding in order to provide funds for the new section 4(c) program

EFFECTIVE DATES

The provisions of the Act and amendments made by the Act would be effective upon the date of enactment, except that the amendment establishing new clause (K) as a requirement for participation in the state grant program does not become effective until one year after the date of enactment.

The amendment further provides that in the event that, prior to the clause (K) effective date, funds have not been appropriated pursuant to section 5 of the Act (as amended by section 104 of this Act) for the purpose of grants under new section 4(c), the Secretary may grant to any State which has not met the requirements of new clause (K) a waiver of such requirements for a period of not more than one year, if the Secretary finds that such State is making a good faith effort to comply with such provisions.

AUGUSTUS F. HAWKINS,
JOE GAYDOS,
MARIO BIAGGI,
PAUL SIMON,
GEO. MILLER,
AUSTIN J. MURPHY,
BALTASAR CORRADA,
PAT WILLIAMS,
DENNIS E. ECKART,
JOHN N. ERLENBORN,
BILL GOODLING,
TOM COLEMAN,
STEVE BARTLETT,
JOHN MCCAIN,
Managers on the Part of the House.

ORRIN HATCH,
JEREMIAH DENTON,
DON NICKLES,
EDWARD M. KENNEDY,
CHRIS DODD,
Managers on the Part of the Senate.

APPOINTMENT OF ADDITIONAL CONFEREE ON H.R. 4164, VOCATIONAL-TECHNICAL EDUCATION ACT OF 1984

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent that the Speaker be authorized to appoint an additional conferee on the part of the House on H.R. 4164, the Vocational-Technical Education Act.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California? The Chair hears none and, without objection, appoints the following additional conferee: Mr. TAUKE.

There was no objection.

CENTRAL INTELLIGENCE AGENCY INFORMATION ACT

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I and the order of the House of September 18, 1984, the unfinished business is the question de novo of suspending the rules and passing the bill, H.R. 5164, as amended, on which further proceedings were postponed on Monday, September 17, 1984.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. BOLAND] that the House suspend the rules and pass the bill, H.R. 5164, as amended.

The question was taken.

RECORDED VOTE

Mr. WEISS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 369, noes 36, not voting 27, as follows:

[Roll No. 402]

AYES—369

Addabbo	Feighan	Lott
Akaka	Fiedler	Lowery (CA)
Albosta	Fields	Lujan
Anderson	Fish	Luken
Andrews (NC)	Flippo	Lundine
Andrews (TX)	Florio	Lungren
Annunzio	Foglietta	Mack
Anthony	Foley	MacKay
Applegate	Ford (MI)	Madigan
Archer	Ford (TN)	Marlenee
Aspin	Fowler	Marriott
Badham	Frank	Martin (IL)
Barnard	Franklin	Martin (NC)
Barnes	Frenzel	Martin (NY)
Bartlett	Frost	Martinez
Bateman	Gaydos	Matsui
Bates	Gejdenson	Mavroules
Beilenson	Gekas	Mazzoli
Bennett	Gephardt	McCain
Bereuter	Gibbons	McCandless
Berman	Gilman	McCloskey
Bevill	Gingrich	McCollum
Biaggi	Glickman	McCurdy
Bilirakis	Gonzalez	McDade
Bliley	Goodling	McEwen
Boehlert	Gore	McHugh
Boggs	Gradison	McKernan
Boland	Green	McKinney
Bonior	Gregg	McNulty
Bonker	Guarini	Mica
Borski	Gunderson	Michel
Bosco	Hall (IN)	Mikulski
Boucher	Hall (OH)	Miller (CA)
Britt	Hall, Ralph	Miller (OH)
Brooks	Hall, Sam	Mineta
Broomfield	Hamilton	Minish
Brown (CA)	Hammerschmidt	Moakley
Brown (CO)	Hance	Molinari
Broyhill	Hansen (ID)	Mollohan
Bryant	Hansen (UT)	Montgomery
Burton (IN)	Harkin	Moody
Byron	Harrison	Moore
Campbell	Hartnett	Morrison (WA)
Carney	Hatcher	Mrazek
Carper	Hefner	Murtha
Carr	Heftel	Myers
Chandler	Hertel	Natcher
Chappell	Hightower	Neal
Chappie	Hiler	Nelson
Clarke	Hillis	Nichols
Clinger	Holt	Nielson
Coats	Hopkins	Nowak
Coelho	Horton	O'Brien
Coleman (MO)	Howard	Oakar
Coleman (TX)	Hoyer	Oberstar
Collins	Hubbard	Obey
Conte	Huckaby	Olin
Cooper	Hughes	Ortiz
Corcoran	Hunter	Oxley
Coughlin	Hutto	Packard
Coyne	Hyde	Panetta
Craig	Ireland	Parris
Crane, Daniel	Jacobs	Pashayan
Crane, Philip	Jeffords	Patman
D'Amours	Jenkins	Patterson
Daniel	Johnson	Pease
Dannemeyer	Jones (NC)	Penny
Darden	Jones (OK)	Pepper
Daschle	Jones (TN)	Petri
Daub	Kaptur	Pickle
Davis	Kasich	Porter
de la Garza	Kazen	Price
Derrick	Kemp	Pritchard
DeWine	Kennelly	Pursell
Dickinson	Kildee	Quillen
Dicks	Kindness	Rahall
Dingell	Kleczka	Rangel
Donnelly	Kolter	Ratchford
Dowdy	Kramer	Ray
Downey	LaFalce	Regula
Dreier	Lagomarsino	Reid
Duncan	Lantos	Richardson
Durbin	Latta	Ridge
Dwyer	Leach	Rinaldo
Dyson	Lent	Ritter
Early	Levin	Roberts
Eckart	Levine	Robinson
Edwards (AL)	Levitas	Rodino
Emerson	Lewis (CA)	Roe
English	Lewis (FL)	Roemer
Erdreich	Lipinski	Rogers
Erlenborn	Livingston	Rose
Evans (IA)	Lloyd	Rostenkowski
Evans (IL)	Loeffler	Roth
Fascell	Long (LA)	Roukema
Fazio	Long (MD)	Rowland
Rudd	Snowe	Vandergriff
Russo	Snyder	Vento
Sabo	Solarz	Volkmer
Sawyer	Solomon	Vucanovich
Schaefer	Spence	Walgren
Scheuer	Spratt	Walker
Schneider	St Germain	Watkins
Schroeder	Staggers	Waxman
Schulze	Stangeland	Wheat
Schumer	Stenholm	Whitehurst
Sensenbrenner	Stokes	Whitley
Sharp	Stratton	Whittaker
Shaw	Stump	Williams (MT)
Shumway	Sundquist	Winn
Shuster	Swift	Wirth
Sikorski	Synar	Wise
Siljander	Tallon	Wolf
Sisisky	Tauke	Wolpe
Skeen	Tauzin	Wortley
Skelton	Taylor	Wright
Slattery	Thomas (CA)	Wyden
Smith (FL)	Thomas (GA)	Yates
Smith (IA)	Torricelli	Yatron
Smith (NE)	Traxler	Young (AK)
Smith (NJ)	Udall	Young (FL)
Smith, Denny	Valentine	Young (MO)
Smith, Robert	Vander Jagt	Zschau

NOES—36

Ackerman	Edgar	Murphy
AuCoin	Edwards (CA)	Ottinger
Bedell	Fuqua	Owens
Boxer	Garcia	Paul
Burton (CA)	Gray	Roybal
Clay	Hawkins	Savage
Conyers	Hayes	Seiberling
Crockett	Kastenmeier	Stark
Dellums	Kostmayer	Torres
Dixon	Leland	Towns
Dorgan	Lowry (WA)	Weaver
Dymally	Mitchell	Weiss

NOT VOTING—27

Alexander	Gramm	Shannon
Bethune	Kogovsek	Shelby
Boner	Leath	Simon
Breaux	Lehman (CA)	Studds
Cheney	Lehman (FL)	Weber
Conable	Markey	Whitten
Courter	McGrath	Williams (OH)
Edwards (OK)	Moorhead	Wilson
Ferraro	Morrison (CT)	Wylie

□ 1600

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

Mr. GEJDENSON and Mr. MATSUI changed their votes from "no" to "aye."

So (two-thirds have voted in favor thereof) the rules were suspended, the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the Report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3755) "An act to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process."

PROVIDING FOR CONSIDERATION OF H.R. 3082, EMERGENCY WETLANDS RESOURCES ACT OF 1983

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 579 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 579

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3082) to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the aqcuisition of wetlands and other essential habitat, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived. After general debate, which shall be confined to the bill and to the amendment made in order by this resolution and which shall continue not to exceed two hours, with one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries and thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs and thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, the bill shall be considered for amendment under the five-minute rule. In lieu of the amendments recommended by the Committees on Merchant Marine and Fisheries, Interior and Insular Affairs, and Public Works and Transportation now printed in the bill, it shall be in order to consider the ammendment in the nature of a substitute printed in the Congressional Record of September 11, 1984 by Representative Jones of North Carolina as an original bill for the purpose of amendment under the five-minute rule. Said substitute shall be considered for amendment by titles instead of by sections and each title shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of section 303(a) of the Congressional Budget Act of 1947 (Public Law 93-344), clause 7 of rule XVI, and clause 5(a) of rule XXI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 1610

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes, for purposes of debate only, to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

tion activities, State export-import banks, and State export trade companies;

(10) the organizational structures under which other industrial nations, such as Japan, Great Britain, Canada, and West Germany, carry out the international trade activities of those nations;

(11) the organizational structure of Federal agencies which make and carry out trade policies, including the need for strengthened and integrated implementation of international trade functions and improvements in the Foreign Commercial Service; and

(12) the need to promote institutional and noninstitutional educational activities that will contribute to the ability of United States businesses to succeed in the marketing of United States goods and services abroad, such as—

(A) government-sponsored work-study programs which allow United States representatives of business, labor, and government to live overseas and analyze foreign market opportunities, study existing trade and cultural barriers, and develop expertise on foreign business practices and trade issues; and

(B) the promotion of foreign language capabilities to facilitate United States commerce by overcoming language and marketing barriers.

FINAL REPORT

SEC. 4. Not later than July 1, 1985, the Commission shall transmit to the President and to the Congress a report containing a detailed statement of the study conducted by the Commission under this Act and the recommendations of the Commission with respect to the matters specified in section 3, including any recommendations for legislation the Commission considers appropriate.

TERMINATION

SEC. 5. The Commission shall terminate on July 1, 1985.

AUTHORIZATION

SEC. 6. For fiscal years 1984 and 1985, there are authorized to be appropriated such sums as may be necessary to carry out this Act.

BAUCUS AMENDMENT NO. 4284

Mr. BAUCUS proposed an amendment to amendment No. 4244 proposed by Mr. DANFORTH to the bill H.R. 3398, supra; as follows:

On page 65 of the matter proposed to be inserted, strike out line 9, and insert in lieu thereof "paragraph (4) and inserting in lieu thereof the following: 'and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;' ".

CENTRAL INTELLIGENCE AGENCY INFORMATION ACT

GOLDWATER AMENDMENT NO. 4285

(Ordered to lie on the table.)

Mr. GOLDWATER submitted an amendment intended to be proposed by him to the bill (H.R. 5164) to amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes; as follows:

At the appropriate place insert the following:

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"Sec. 701. Exemption of certain operational files from search, review, publication, or disclosure.

"Sec. 702. Decennial review of exempted operational files.".

(c) Subsection (q) of section 552a of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(q)"; and

(2) by adding at the end thereof the following:

"(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.".

SEC. 3. (a) The Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist, shall prepare and submit by June 1, 1985, a report on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value.

(b)(1) The Director shall, once each six months, prepare and submit an unclassified report which includes—

(A) a description of the specific measures established by the Director to improve the processing of requests under section 552 of title 5, United States Code;

(B) the current budgetary and personnel allocations for such processing;

(C) the number of such requests (i) received and processed during the preceding six months, and (ii) pending at the time of submission of such report; and

(D) an estimate of the current average response time for completing the processing of such requests.

(2) The first report required by paragraph (1) shall be submitted by a date which is six months after the date of enactmenmt of this Act. The requirements of such paragraph shall cease to apply after the submission of the fourth such report.

(c) Each of the reports required by subsections (a) and (b) shall be submitted to the Permanent Select Committee on Intelligence and the Committee on Government Operations of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 4. The amendments made by subsections (a) and (b) of section 2 shall be effective upon enactment of this Act and shall apply with respect to any requests for records, whether or not such request was made prior to such enactment, and shall apply to all civil actions not commenced prior to February 7, 1984.

OMNIBUS TRADE ACT

BAUCUS AMENDMENT NO. 4286

Mr. BAUCUS proposed an amendment to amendment No. 4244 proposed by Mr. DANFORTH to the bill H.R. 3398, supra; as follows:

On page 34 of the matter proposed to be inserted, between lines 2 and 3, insert the following:

SEC. . CUSTOMS BROKERS.

(a) Section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) is amended to read as follows:

"SEC. 641. CUSTOMS BROKERS.

"(a) DEFINITIONS.—For purposes of this section—

"(1) The term 'customs broker' means any person granted a customs broker's license by the Secretary under subsection (b).

"(2) The term 'customs business' means those activities involving transactions with the Customs Service concerning—

"(A) the entry and admissibility of merchandise,

"(B) the classification and valuation of such merchandise,

"(C) the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or

"(D) the refund, rebate, or drawback of such duties, taxes, or other charges.

"(3) The term 'Secretary' means the Secretary of the Treasury.

"(b) CUSTOM BROKERS LICENSES.—

"(1) IN GENERAL.—No person may conduct customs business (other than solely on such person's own behalf) unless such person holds a valid customs brokers license issued by the Secretary under paragraph (2) or (3).

"(2) LICENSES FOR INDIVIDUALS.—The Secretary may grant an individual a customs brokers license only if that individual is a citizen of the United States. Before granting the license, the Secretary may require an applicant to provide any information that the Secretary determines to be necessary to establish that the applicant is of good moral character and qualified to render valuable service to others in the conduct of customs business. In assessing the qualifications of an applicant, the Secretary may conduct an examination to determine the applicant's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and any other appropriate matters.

"(3) LICENSES FOR CORPORATION.—The Secretary may grant a customs brokers license to any corporation, association, or partnership that is organized or existing under the laws of any of the several States of the United States if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs brokers license granted under paragraph (2).

"(4) DUTIES.—A customs broker shall exercise responsible supervision and control over the customs business that the customs broker conducts.

"(5) LAPSE OF LICENSE.—If a corporation, association, or partnership that is licensed as a customs broker under paragraph (3) fails to have, for any continuous period of 120 days, at least one officer of the corporation or association, or at least one member of the partnership, validly licensed under paragraph (2), in addition to any other sanction under this section (including paragraph (6)), the customs broker's license of such corporation, association, or partnership shall expire at the close of such 120-day period.

"(6) PROHIBITED ACTS.—Any person who intentionally transacts customs business (other than solely on such person's own behalf) without holding a valid customs brokers license granted to such person under this subsection shall be liable to the United States for a monetary penalty not to exceed $10,000 for each such transaction as well as for each violation of any other provision of this section. This penalty shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in subsection (d)(2)(A).

"(c) CUSTOMS BROKERS PERMITS.—

"(1) IN GENERAL.—Each person granted a customs brokers license under subsection (b) shall—

"(A) be issued a permit, in accordance with regulations prescribed under this section, for each customs district in which that person conducts customs business; and

"(B) regularly employ in each customs district for which such a permit is issued at least one individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.

"(2) LAPSE OF PERMIT.—If a customs broker granted a permit under paragraph (1) fails to employ, for any continuous period of 120 days, at least one individual who is licensed under subsection (b)(2) within the district for which a permit was issued, in addition to any other sanction under this section (including any sanction imposed under subsection (d)), such permit shall expire at the end of such 120-day period.

"(d) DISCIPLINARY PROCEEDINGS.—

"(1) GENERAL RULE.—The Secretary may impose a monetary penalty in all cases (other than in the case of infractions described in subparagraph (B)(iii)) or revoke or suspend a license or permit of any customs broker, if the Secretary determines that the broker—

"(A) has made, or caused to be made, in any application for any license or permit under this section, or in any report filed with the Customs Service, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein;

"(B) has been convicted at any time after the filing of an application for license under subsection (b) of any felony or misdemeanor which the Secretary finds—

"(i) involved the importation or exportation of merchandise;

"(ii) arose out of the conduct of the customs business of the customs broker; or

"(iii) involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

"(C) has violated any provision of any law enforced by the Customs Service or violated the rules or regulations issued under any such provision;

"(D) has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by the Customs Service or of the rules or regulations issued under any such provision;

"(E) has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary; or

"(F) has, in the course of the customs business of such broker and with the intent to defraud, wilfully and knowingly deceived, misled, or threatened any client or prospective client.

"(2) PROCEDURES.—

"(A) MONETARY PENALTY.—

"(i) NOTICE.—Unless action has been taken under subparagraph (B), the appropriate customs officer shall serve notice in writing upon any customs broker to show cause why the broker should not be subject to a monetary penalty not to exceed $30,000 in total for a violation or violations of this section. Such notice shall advise the customs broker of the allegations or complaints against him and shall explain that the broker has a right to respond to the allegations or complaints in writing within 30 days of the date of the notice.

"(ii) CONSIDERATION OF ALLEGATIONS AND RESPONSES.—Before imposing a monetary penalty, the customs officer shall consider the allegations or complaints and any timely response made by the customs broker and issue a written decision.

"(iii) REMISSION OR MITIGATION OF PENALTIES.—A customs broker against whom a monetary penalty has been issued under this section shall have a reasonable opportunity under section 618 to make representations seeking remission or mitigation of the monetary penalty.

"(iv) WRITTEN DECISION.—After the conclusion of any proceeding under section 618, the appropriate customs officer shall provide to the customs broker a written decision which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

"(B) REVOCATION OR SUSPENSION.—

"(i) NOTICE OF COMPLAINT.—The appropriate customs officer may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. Such notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond.

"(ii) NOTICE OF HEARING.—If no response to the notice provided under clause (i) is filed, or the appropriate customs officer determines that the revocation or suspension is still warranted after receiving such a response, the appropriate customs officer shall notify the customs broker in writing of—

"(I) a hearing to be held within 15 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5, United States Code, who shall serve as the hearing officer, and

"(II) the right of the customs broker to be represented by counsel at such hearing.

"(iii) TESTIMONY; CROSS EXAMINATION.—Testimony presented at the hearing described in clause (ii), including the proof of the charges and the response thereto, shall be taken under oath and the right of cross-examination accorded to both parties at such hearing.

"(iv) TRANSCRIPT.—A transcript of the hearing described in clause (ii) shall be made and a copy shall be provided to the appropriate customs officer and the customs broker.

"(v) POST-HEARING BRIEF.—The customs broker and the appropriate customs officer shall be provided a reasonable period of time after receipt of the transcript in which to file a post-hearing brief.

"(vi) WAIVER OR ABSENCE.—If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties.

"(vii) TRANSFER OF RECORD.—The hearing officer shall promptly transmit the record of the case along with the findings of fact and recommendations of the hearing officer to the Secretary for decision.

"(viii) DECISION OF THE SECRETARY.—The Secretary will issue a written decision based solely on the record which sets forth findings of fact and the reasons for the decision of the Secretary. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed $30,000, than was contained in the notice to show cause.

"(3) SETTLEMENT AND COMPROMISE.—The Secretary may settle and compromise any disciplinary proceeding which has been instituted under this subsection according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty.

"(4) LIMITATION OF ACTIONS.—Notwithstanding section 621, no proceeding under this subsection or subsection (b)(6) shall be commenced unless such proceeding is instituted by the appropriate service of written notice within 5 years from the date the alleged violation was committed; except that if the alleged violation consists of fraud, the 5-year period of limitation shall commence running from the time such alleged violation was discovered.

"(e) JUDICIAL APPEAL.—

"(1) IN GENERAL.—A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c), or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B), by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a written petition requesting that the decision or order be modified or set aside in whole or in part. A copy of the petition shall be transmitted promptly by the clerk of the court to the Secretary or his designee. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under subsection (d)(2)(B), after receipt of the petition, the Secretary shall file in court the record upon which the decision or order complained of was entered, as provided in section 2635(d) of title 28, United States Code.

"(2) CONSIDERATION OF OBJECTIONS.—The court shall not consider any objection to the admission of evidence or testimony or to the decision or order of the Secretary unless that objection was raised before the hearing officer in suspension or revocation proceedings or there were reasonable grounds for failure to do so.

"(3) CONCLUSIVENESS OF FINDINGS.—The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

"(4) ADDITIONAL EVIDENCES.—If any party applies to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and that reasonable grounds existed for the failure to present the evidence in the proceedings before the hearing officer, the court may order the additional evidence to be taken before the hearing officer and to be presented in a manner and upon the terms and conditions prescribed by the court. The Secretary may modify the findings of facts on the basis of the additional evidence presented. The Secretary shall then file with the court any new or modified findings of fact which shall be conclusive if supported by substantial evidence, together with a recommendation, if any, for the modification or setting aside of the original decision or order.

"(5) EFFECT OF PROCEEDINGS.—The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the decision of the Secretary except in the case of a denial of a license or permit.

"(6) FAILURE TO APPEAL.—If an appeal is not filed within the time limits specified in this section, the decision by the Secretary shall be final and conclusive. In the case of

Washington University, Washington, DC.

John P.: Nevada State senator twice; unsuccessful candidate for Lieutenant Governor and Governor; his daughter, Elizabeth, practices law with her father and serves on the Young Democrats National Committee.

Thomas A.: Former Nevada State deputy attorney general; former president of the Nevada State Bar Association; currently, a Nevada State district court judge; his son, Michael, took over his father's law practice when he became a judge.

As you can see, the accomplishments of this family are many, and there is no indication of anything but even more outstanding contributions in the future for the State and the Nation. That is why it is a special privilege for me to have had a part in the renaming of the Federal building in Clark County, which will be known as the Foley Federal Building and U.S. Courthouse.●

INDIAN HEALTH CARE AMENDMENTS OF 1984

SPEECH OF

HON. JOHN McCAIN

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 14, 1984

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4567) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes.

● Mr. McCAIN. Mr. Chairman, I am pleased to rise in strong support of H.R. 4567, the Indian Health Care Amendments of 1984.

As the distinguished chairman of the Interior Committee has stated, this legislation has been the subject of extensive hearings in three committees of the House and Senate over the past 2 years.

The record of those hearings shows that substantial progress has been made in the status of Indian health as a result of the programs and efforts established under the Indian Health Care Improvement Act of 1976 and the 1980 amendments to it.

The record also shows that Indian health continues to lag well behind that of the general population. Indeed, recent statistics indicate that on more than half the 265 reservations in the continental United States and in Alaska Native villages, native Americans are 40 to 60 percent deficient in terms of their access to a standard measure of health care resources. In my State of Arizona, with its large Indian population, 17 of 20 reservations rate a 40 to 60 percent deficiency.

The Indian health scholarship programs of the 1976 act have enabled hundreds of young Indians to obtain education and skills in various health professions. Many now work on or near reservations in IHS facilities. Many more are needed, however, to eliminate shortages of health professionals that are common to IHS facilities, especially in remote reservation areas.

As a result of title II appropriations, many health service backlogs for surgeries, such as for otitis media, an inner ear disease, and the incidence of such diseases as tuberculosis, have been eliminated or reduced. However, statistics reveal Indian people continue to suffer from a variety of environmentally related diseases and other afflications at rates well above those of the general population. Alcoholism, which is an economic and social problem as well as a health problem, remains the scourge of Indian society.

Since 1976 more than a dozen IHS hospitals have been upgraded to meet JCAH accreditation standards. Several new Indian hospitals and clinics have been built. Other facilities have been modernized, repaired, and staffed with medicare and medicaid funds available to IHS as a result of the 1976 act. Despite these improvements, 9 of 48 IHS hospitals still are unable to meet accreditation standards, and many of the more than 200 IHS health stations and clinics are understaffed and/or located in substandard structures.

In urban areas, where roughly half of all native Americans now live, Indians have experienced considerable difficulty gaining access to health care. Under the 1976 act, 37 urban clinics provide a wide range of direct and indirect care and help Indians obtain access to existing health care resources. In Phoenix, as in other cities, the Urban Indian Program does yeoman work in meeting the needs of so-called urban Indians.

If we are to achieve the goals of the 1976 act—to raise the health status of Indian people to a level of parity with the general population and to increase Indian involvement in their health care system—then Congress has a duty to continue the efforts begun under the Health Care Improvement Act. That is the purpose of the legislation before us.

H.R. 4567 is a sound, fair, reasonable bill that represents a responsible effort to fulfill this Nation's legal and moral obligations to improve the health of Indian people. It enjoys bipartisan support in this House and in the other body. It has unanimous support from Indians and Indian tribes around the country. The administration, with some objections to particular provisions, supports reauthorization. H.R. 4567 is good legislation and I urge my colleagues to support it.●

KEEP THE CIA ACCOUNTABLE: VOTE "NO" ON H.R. 5164

SPEECH OF

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 17, 1984

● Mr. OTTINGER. Mr. Speaker, I rise to commend the efforts of my friend and colleague from New York, Mr. WEISS, to inject some necessary clarity into the debate on exempting the CIA from certain Freedom of Information Act reviews. I join him in opposing passage of H.R. 5164.

Clearly, in the interests of national security, some CIA information should not be automatically available for public consumption. The committee makes that point in its report. However, over the past several years there has been an accelerating trend away from public scrutiny and toward Government secrecy in cases of CIA involvement where security interests are not demonstrated, a trend I believe threatens the public's right to know. Classification of CIA documents has become the norm, rather than the exception. Such actions should not be encouraged by legislating indiscriminate protection of classified files.

Most dangerous, this bill seeks to limit scrutiny of even the decision to classify by curtailing the rights of citizens to judicial review of a CIA decision to withhold classified information from release under the FOIA. Why is this necessary? Proponents of the bill claim it will facilitate response to other FOIA requests, ones that do not involve classified operational files, by eliminating the 2-year backlog of requests for classified information. But if judicial review is eliminated, what is to prevent greater and greater amounts of information from being placed in these protected files?

Under current law, the CIA is allowed to protect classified information from FOIA review. But should the requester suspect that some information has been unnecessarily or unjustly classified, a judge may order and conduct a private—in camera—review of the material to determine its sensitivity. As Representative WEISS pointed out, the courts have almost always ruled in favor of the agency in such cases, and there has never been an unauthorized release of documents under this procedure. What can we expect if this right of review is curtailed?

Rather than speeding the FOIA process, we would be sanctioning the classification of materials that in the past have been crucial to the discovery of numerous illegal operations of the CIA, from the domestic surveillance of activists to the mining of foreign ports. It is possible to adjust requirements for access to sensitive material without legislating blanket exemption to an already recalcitrant agency to proceed without public checks. It is an

Or, where, feasible and cost effective to set up an on-site child care at the place of the parents' federal employment.

These are only a few of the most frequently used types of employer-sponsored child care options.

(c) The areas where cost savings will most likely be found are detailed in this section. The study should consider measuring the current costs to the government which are lost in the following areas due to dependent care-related matters: productivity, recruitment, turnover, absenteeism, tardiness, sick leave, annual leave, training of replacements, lost worktime, loyalty, public relations and other factors—which are often related to problems with dependent care and then compare these figures with the costs of offering a child care benefit.

(d) The Comptroller General is authorized to conduct research as necessary with the private consultant—whether through sampling, surveys, or estimates—to formulate or substantiate any cost savings identified by this analysis.

(e) The report made by GAO, and the private consultant must be transmitted to Congress within one year and should include recommendations for administrative or legislative action. Although a report would be welcome before such deadline, a researcher in this area in Texas has outlined that a report of this magnitude would take a full year to complete.

(f) GAO shall contract with a private consultant or consulting firm having education, training, expertise and knowledge in analyzing cost benefits of child care.

(g) All federal agencies are instructed to cooperate with GAO in accumulating the necessary data and material on which to make an accurate cost-benefit analysis.

(h) Such sums as necessary are authorized to carry out this cost benefit analysis. It is assumed by the sponsor that this type of analysis would not cost more than $250,000 over the course of the next year.

H.R. 6269

A bill to require a cost-benefit analysis of a Government program of furnishing workday care benefits for dependent children of Federal employees

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 "Federal Employees' Day Care Benefits Study Act of 1984".

SEC. 2. (a) For the purposes of this section—

(1) the term "Comptroller General" means the Comptroller General of the United States; and

(2) the term "consultant" means the individual or entity entering into a contract with the Comptroller General under subsection (f).

(b)(1) The Comptroller General, in the consultation with the consultant, shall—

(A) identify several options for a program for the Government to furnish workday care benefits to dependent children of Federal employees; and

(B) carry out a cost-benefit analysis of establishing and carrying out each program identified as an option pursuant to clause (A).

(2) The options identified by the Comptroller General pursuant to paragraph (1)(A) shall include such options as—

(A) a program to furnish child care at the place of employment;

(B) a program to furnish vouchers to pay for child care services;

(C) a program to furnish child care under a Government contract;

(D) a program to furnish child care through a consortium of Government agencies or a consortium of Government agencies and other employers using child care services; and

(E) a program to furnish information and referral services relating to child care.

(c) In carrying out the cost-benefit analysis required by subsection (b), the Comptroller General shall determine, with respect to each program identified pursuant to such subsection, whether the Government would achieve any cost savings in carrying out the program by reason of such factors as—

(1) increased productivity;

(2) reduced turnover in employees;

(3) reduced absenteeism;

(4) reduced tardiness;

(5) reduced use of sick leave and annual leave;

(6) reduced loss of worktime;

(7) increased loyalty; and

(8) reduced recruitment costs resulting from increased attractiveness of the Government as an employer.

(d) In carrying out the cost-benefit analysis required by subsection (b), the Comptroller General—

(1) shall review existing data and research available on the options for a child care program; and

(2) may carry out such surveys and sampling, distribute and collect such questionnaires, and make such estimates as the Comptroller General, in consultation with the consultant, considers appropriate for the purposes of the analysis or to assure that there is sufficient data relating to the entire Government workforce and the several Government agencies nationwide.

(e) Not later than one year after the date of enactment of this Act, the Comptroller General shall transmit to the Congress a report on the cost-benefit analysis carried out under this section. The report shall include the findings of the Comptroller General and any recommendations for administrative action or legislation that the Comptroller General considers appropriate.

(f) The Comptroller General shall enter into a contract with any qualified individual or entity to consult with the Comptroller General on the cost-benefit analysis required by subsection (b). For the purposes of the first sentence, a qualified individual or entity is any individual or entity who, by reason of education, training, or experience, has extensive knowledge and expertise in the major areas to be considered in the cost-benefit analysis.

(g) Each head of a department, agency, or other entity of the Government shall furnish the Comptroller General such information, services, and other assistance as the Comptroller General considers necessary to carry out the cost-benefit analysis required by subsection (b).

(h) There are authorized to be appropriated such sums as may be necessary to carry out this section.○

FOLEY FAMILY: A NEVADA LEGAL SAGA

HON. HARRY M. REID

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 18, 1984

○ Mr. REID. Mr. Speaker, throughout the legislative session, we Members of Congress study thousands of documents, as well as attend hundreds of briefings and hearings, before we commit our votes to legislation when it comes before the House. Recognizing that even this description of the procedure is simplistic, I am especially appreciative of the August 9, 1984, passage of H.R. 4717, a bill to name the Federal building in Clark County, NV, the Foley Federal Building and U.S. Courthouse.

To understand the significance of this name change it is important to understand the impact that the Foley family has made on Nevada, especially in terms of the State's legal history. In fact, in describing the people who pursue the diverse challenges of the law, Nevadans consider the name Foley as synonymous with "the law." In toto, the Foley clan has been in that business for about 300 years—with more to come. That translates into four generations—12 lawyers, at last count—who have held nearly every political position.

Thomas Llewellyn Foley came to Goldfield, NV, in 1906, where he set up law practice. His son, Roger T., joined his practice, but soon branched off into politics as Esmerelda County District Attorney.

In 1928, the family moved to Las Vegas, where Roger T.'s five sons, George, Joe, John, Roger, and Tom, would eventually create, protect, and practice the law.

It was in 1945 that President Franklin Roosevelt appointed Roger T. as a Federal judge, a position he held until his death in 1974. Five years after that appointment, his five sons, all practicing law together at that time, held the record as the Nation's largest film of "all brothers." They held that auspicious title for at least 10 years.

In 1961, one of the brothers, Roger D., followed his father's example by being appointed Federal judge by President John Kennedy. He now is a senior Federal judge.

Indeed, there has never been such a dynamic family that has given so much knowledge, experience and loyalty to the legal and political development of one State.

Following are brief profiles of the five sons of Roger T., highlights of their political careers and the legal careers of some of their offspring.

Roger D.: Former Clark County district attorney, former Nevada attorney general and former Federal district judge; he now is a senior Federal district judge; his daughter, Mary Louise, is a pre-law student at the University of Nevada/Las Vegas.

George W.: Former member of the Nevada Boxing Commission and former Clark County District Attorney; his son, George, Jr., recently graduated from McGeorge School of Law as valedictorian and now practices law with his father in Las Vegas.

Joseph M.: Currently, and announced candidate for UNLV Board of Regents; his daughter, Helen, has served in the Nevada Assembly and now serves in the State senate; his son, Daniel, is a recent law graduate of the University of Utah; his daughter, Shannon, is studying law at George

abdication of our responsibility to uphold the practice of open Government to allow greater secrecy for an agency that has repeatedly betrayed the public in its undertakings.

I urge my colleagues to vote "no" on H.R. 5164.●

H.R. 4994—TRANSFER OF DC TAX EXEMPTION ON CERTAIN PROPERTY OF THE JEWISH WAR VETERANS

SPEECH OF

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, September 17, 1984

● Mr. McKINNEY. Mr. Speaker, the purpose of H.R. 4994 is to transfer a congressional-granted District of Columbia tax exemption provided to the Jewish War Veterans, U.S.A. National Memorial, Inc., from one piece of property to another. The original exemption, which was granted in 1955, was site specific to what was then the headquarters building of the organization. That property has now been sold, and the organization has acquired a new headquarters building nearby.

Although it should be clear, I would stress that this bill does not add another piece of property to the existing exemption, nor does it create a separate, new exemption. Instead it repeals the reference to the original headquarters building in the original exemption, and substitutes a description of the new building. If this measure is enacted, which I sincerely hope will be the case, the former headquarters building will be returned to the District of Columbia tax rolls, as it has been sold to a private entity, and the new building will be exempted from taxes as long as it is owned and occupied by the organization.

In light of the existence of home rule for the District of Columbia, it is legitimate to question why the Congress, and not the local council, is taking this action. There are two very legitimate reasons. First, the organization has made a good faith effort to have this matter resolved at the local level. An application was filed with the District of Columbia Department of Finance and Revenue seeking a tax exemption for the new property. That request has been denied. That denial can only be assumed to reflect the position of the local executive branch of government. Since the original exemption was granted by Congress, and since the Congress maintains its constitutional authority to act as legislature for the District of Columbia on any and all matters, it is within the power of Congress to act. Although it would be my personal preference that the city take the necessary action to grant this exemption, the indications received thus far point to that not happening.

There are further problems, even if the city did enact local legislation approving the exemption. All District of Columbia laws must undergo a period of congressional review before taking effect. With the sine die adjournment date rapidly approaching, that review could not be completed in this Congress. Thus, any local legislation dealing with this problem would need to be resubmitted in the next Congress for review. The bottom line is that it would be sometime in the spring of 1985 before the local law could become finalized. A delay of that long is simply unacceptable, since the organization would be forced to pay the tax levied until an exemption were finalized, and then seek reimbursement. That would clearly not be consistent with the intent of Congress in granting the original exemption.

There are more severe problems with a reliance on local government action. The Supreme Court decision in INS against Chadha declared legislative vetoes unconstitutional. That decision applied to the review procedures contained in the Home Rule Act—Public Law 93-198, as amended—pertaining to finalization of local laws. Thus, any local legislation on this, or really any other matter will become and remain legally questionable pursuant to the Supreme Court decision. it is for this very reason that the city, although they have the authority to issue bonds, has not done so and will not do so unless the overriding legality of any local legislation is resolved.

Mr. Speaker, for these reasons it is proper and prudent for Congress to take the action suggested in H.R. 4994. It is not an erosion of the principle of home rule, and should not be viewed as such. It is a reaffirmation of the intent of Congress structured in the only manner possible to insure its continued and uninterrupted validity.●

EUROPE'S HIGH-TECH DELUSIONS

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 18, 1984

● Mr. RITTER. Mr. Speaker, I would like to share with my colleagues a recent article from the Wall Street Journal by Peter F. Drucker. The article strongly supports the "targeting the process of innovation" type of tonic that our House task force on high technology initiatives is prescribing to strengthen U.S. industrial competitiveness. Mr. Drucker presents a very compelling case for why our approach is right for the United States with its large enterpreneurial economy but wrong for Europe.

EUROPE'S HIGH-TECH DELUSION

(By Peter F. Drucker)

High-tech entrepreneurship is all the rage in Europe these days. The French have funded a high-powered ministry that will make the encouragement of high-tech entrepreneurship a top government priority. The West Germans are starting up venture-capital firms on the U.S. model and are talking of having their own Silicon *Tal*, or valley. They have even coined a new word—*Unternehmer-Kultur* (entrepreneurial culture)—and are busy writing learned papers and holding symposia on it. Even the British are proposing government aid to new high-tech enterprises in fields such as semiconductors, biotechnology or telecommunications.

The Europeans are right, of course, to be concerned about the widening high-tech gap between themselves and their U.S. and Japanese competitors. Without indigenous high-tech capacity and production, no country can expect to be a leader any more. And yet, the European belief that "high-tech entrepreneurs" can flourish, all by themsleves and without being embedded in an entreprenurial economy, is a total misunderstanding.

One reason is politics. High-tech by itself is the maker of tomorrow's jobs rather than today's. To provide the new jobs needed to employ a growing work force a country needs "low-tech" or "no-tech" entrepreneurs in large numbers—and the Europeans do not want these. In the U.S., employment in the Fortune 1,000 companies and in government agencies has fallen by six million people in the past 15 to 20 years. Total employment, however, has risen to 106 million now from 71 million in 1965. Yet high-tech during this period has provided only about six million new jobs—that is, no more than smokestack industry and government have lost. All the additional jobs in the U.S. economy, in our words, have been provided by "middle-tech," low-tech and no-tech entrepreneurs—by makers of surgical instruments, of exercise equipment for use in the home, of running shoes; by financial-service firms and toy makers; by "ethnic" restaurants and low-fare airlines.

POLITICAL REALITIES

If entrepreneurial activity is confined to high-tech—and this is what the Europeans are trying to do—unemployment will continue to go up as "smokestack" industries either cut back production or automate. No government, and certainly no democratic one, could then possibly continue to subordinate the ailing giants of yesteryear to an uncertain high-tech tomorrow. Soon, very soon, it would be forced by political realities to abandon the support of high-tech and to put all its resources in defending, subsidizing and bailing out existing employers and especially the heavily unionized smokestack companies. The pressures to do that are already building fast.

In France, the Communists recently pulled out of the government over this issue. President Francois Mitterrand's own Socialist Party, especially its powerful and vocal left wing, is also increasingly unhappy with his high-tech policies. They are also increasingly unpopular, moreover, with large employers. Indeed it is widely believed that the French right, in its attempt to regain a majority in the 1986 parliamentary elections, will make a reversal of Mr. Mitterrand's industrial policy its main plank and demand that France give priority to employment in existing industries and scuttle high-tech entrepreneurship. This already is the program of the National Front, a rapidly growing far-right party.

In West Germany, demands to shore up old businesses to maintain employment, and to deny access to credit and capital to new entrepreneurs, are growing steadily. Banks are already under some pressure from their main clients, the existing businesses, which expect them not to provide financing to any

Catastrophic wildfires occurred in the Pacific Northwest and Northern Rocky Mountain States in 1973 and in California in 1977. In these situations Canadian Forces could have been effectively used to supplement and back up domestic firefighters. H.R. 3726 would allow such units to be used and would permit their reimbursement.

Mr. KINDNESS. Mr. Speaker, I join in support of H.R. 3726, a bill to permit the use of foreign firefighting resources on Federal land and to improve the wildfire fighting capability of the Federal Government.

Wildfires, as has been pointed out, especially in the Western States, have caused millions of dollars of damage in the last decade. Recently, the fires in Montana raged out of control and burned thousands of acres of forest and range land as well as residential and commercial property and this needless destruction must be deterred or stopped to the best of our ability.

H.R. 3726 will increase our ability to fight such fires by permitting the use of firefighting organizations of foreign lands including those of foreign corporations and associations, in fighting wildfires anywhere on Federal land in the United States.

These foreign firefighters would provide much-needed assistance in manpower and equipment to our domestic forces. The Department of Agriculture stated that Canadian forces would be especially helpful in controlling fires in the Pacific Northwest and Rocky Mountain States.

In addition, the Department has ascertained that in certain situations it is more cost-effective to reimburse foreign forces rather than to transport Federal or State forces from more distant locations.

So, Mr. Speaker, H.R. 3726 was proposed by the administration. It represents a logical and necessary step in increasing the fire protection of our Federal land. I strongly urge support of H.R. 3726 and recommend its approval, and yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Speaker, I was unaware of this bill, and the gentleman may wonder why I am a little concerned right now, but you are talking about Federal lands and it is cheaper, apparently the administration says it is cheaper to hire foreigners to be fighting our fires on our Federal lands.

Now, are we speaking it is cheaper because of the salaries being paid or because of transportation capabilities?

Mr. KINDNESS. Mr. Speaker, the concern is that uppermost is transporting equipment and personnel over greater distances. For example, in the gentleman's State of Alaska, it is a potential problem to have backup personnel and equipment coming from down in the Western States; a greater distance while fires might rage.

Mr. YOUNG of Alaska. What I am concerned here with, we have a very valid group of firefighters available in the State of Alaska primarily as Alaskan Indians. We just passed a bill a few moments ago concerning waters.

I would be deeply disturbed if I happened to look out and see a bunch of Canadians working in my Federal lands which is now owned because of efforts of some people in this Congress approximately 74 percent by the Federal Government, but seeing Alaskans deprived of one of the major sources of income from the more remote areas, fighting fires on Federal lands.

□ 1300

Mr. KINDNESS. Mr. Speaker, I would hasten to assure the gentleman from Alaska that what is intended here is strictly the emergency supplemental use of personnel from outside of the area that would be affected by the fire, and only where there are no domestic personnel and resources readily available to get there.

But as the gentleman would concede, there could be occasions in which it would be more costly and more time-consuming to move people and equipment from, let us say, Wyoming to a fire in Alaska than it would be to get some help from our neighbors across the border.

Mr. YOUNG of Alaska. I have no argument with that. I just want to make sure that those in Montana, if the firefighters are available, they would have been hired first; or if it is in Wyoming or Utah or California or the State of Washington or Oregon, the timber States, and Alaska, that because of the proximity of the Canadian work force, that they are not available or they are not used when there are available forces near.

I would like to ask the chairman of the committee about that.

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

Mr. KINDNESS. I yield to the gentleman from Florida.

Mr. FUQUA. I thank the gentleman for yielding.

Mr. Speaker, the gentleman from Alaska brings up a very legitimate question, and that is not the intent of the legislation, to deny that. It is really to assist in logistics operations, like in the recent fire in Montana. We brought firefighters from all over the United States, which would have strained the system if we had fires develop in other places, and it was very close in proximity to where Canadians could help.

Under the present law, we could not reimburse them, had they come in. This is not hiring the Canadians; it would be on a reimbursement basis in case of emergency, so that the system would not be strained.

Mr. YOUNG of Alaska. I want to thank both of the gentlemen for this colloquy. I think it has set the record straight that the areas that we are concerned with would be protected, and also that the residents there will have access to, very frankly, a source of employment whenever those things occur.

Mr. KINDNESS. I thank the gentleman for his contribution in making the record clear on that point.

Mr. Speaker, I have no further requests for time and I reserve the balance of my time.

Mr. FUQUA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. FUQUA] that the House suspend rules and pass the bill, H.R. 3726, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FUQUA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

CENTRAL INTELLIGENCE AGENCY INFORMATION ACT

Mr. BOLAND. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5164) to amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes, as amended by the Committee on Government Operations.

The Clerk read as follows:

H.R. 5164

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 "Central Intelligence Agency Information Act".

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

"SEC. 701. (a) Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence from the provisions of section 552 of title 5, United States Code (Freedom of Information Act), which require publication or disclosure, or search or review in connection therewith.

"(b) For the purposes of this title the term 'operational files' means—

"(1) files of the Directorate of Operations which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with for-

eign governments or their intelligence or security services;

"(2) files of the Directorate for Science and Technology which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; and

"(3) files of the Office of Security which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources;

except that files which are the sole repository of disseminated intelligence are not operational files.

"(c) Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning—

"(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 of title 5, United States Code (Freedom of Information Act), or section 552a of title 5 United States Code (Privacy Act of 1974);

"(2) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code (Freedom of Information Act); or

"(3) the specific subject matter of an investigation by the intelligence committees of the Congress, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of Central Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

"(d)(1) Files that are not exempted under subsection (a) of this section which contain information derived or disseminated from exempted operational files shall be subject to search and review.

"(2) The inclusion of information from exempted operational files in files that are not exempted under subsection (a) of this section shall not affect the exemption under subsection (a) of this section of the originating operational files from search, review, publication, or disclosure.

"(3) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under subsection (a) of this section and which have been returned to exempted operational files for sole retention shall be subject to search and review.

"(e) The provisions of subsection (a) of this section shall not be superseded except by a provision of law which is enacted after the date of enactment of subsection (a), and which specifically cites and repeals or modifies its provisions.

"(f) Whenever any person who has requested agency records under section 552 of title 5, United States Code (Freedom of Information Act), alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code, except that—

"(1) in any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign relations which is filed with, or produced for, the court by the Central Intelligence Agency, such information shall be examined ex parte, in camera by the court;

"(2) the court shall, to the fullest extent practicable, determine issues of fact based on sworn written submissions of the parties;

"(3) when a complaint alleges that requested records were improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission, based upon personal knowledge or otherwise admissible evidence;

"(4)(A) when a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Central Intelligence Agency shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records currently perform the functions set forth in subsection (b) of this section; and

"(B) the court may not order the Central Intelligence Agency to review the content of any exempted operational file or files in order to make the demonstration required under subparagraph (A) of this paragraph, unless the complainant disputes the Central Intelligence Agency's showing with a sworn written submission based on personal knowledge or otherwise admissible evidences;

"(5) in proceeding under paragraphs (3) and (4) of this subsection, the parties shall not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that request for admission may be made pursuant to rules 26 and 36;

"(6) if the court finds under this subsection that the Central Intelligence Agency has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Central Intelligence Agency to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code (Freedom of Information Act), and such order shall be the exclusive remedy for failure to comply with this section; and

"(7) if at any time following the filing of a complaint pursuant to this subsection the Central Intelligence Agency agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

"DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES

"SEC. 702. (a) Not less than once every ten years, the Director of Central Intelligence shall review the exemptions in force under subsection (a) of section 701 of this Act to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

"(b) The review required by subsection (a) of this section shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

"(c) A complainant who alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with this section may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining (1) whether the Central Intelligence Agency has conducted the review required by subsection (a) of this section within ten years of enactment of this title or within ten years after the last review, and (2) whether the Central Intelligence Agency, in fact, considered the criteria set forth in subsection (b) of this section in conducting the required review.".

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"Sec. 701. Exemption of certain operational files from search, review, publication, or disclosure.

"Sec. 702. Decennial review of exempted operational files.".

(c) Subsection (q) of section 552a of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(q)"; and

(2) by adding at the end thereof the following:

"(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.".

SEC. 3. (a) The Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist, shall prepare and submit by June 1, 1985, a report on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value.

(b)(1) The Director shall, once each six months, prepare and submit an unclassified report which includes—

(A) a description of the specific measures established by the Director to improve the processing of requests under section 552 of title 5, United States Code;

(B) the current budgetary and personnel allocations for such processing;

(C) the number of such requests (i) received and processed during the preceding six months, and (ii) pending at the tme of submission of such report; and

(D) an estimate of the current average response time for completing the processing of such requests.

(2) The first report required by paragraph (1) shall be submitted by a date which is six months after the date of enactment of this Act. The requirements of such paragraph shall cease to apply after the submission of the fourth such report.

(c) Each of the reports required by subsections (a) and (b) shall be submitted to the Permanent Select Committee on Intelligence and the Committee on Government Operations of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 4. The amendments made by subsections (a) and (b) of section 2 shall be effective upon enactment of this Act and shall apply with respect to any requests for records, whether or not such request was made prior to such enactment, and shall apply to all civil actions not commenced prior to February 7, 1984.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Massachusetts [Mr. BOLAND] will be recognized for 20 minutes and the gentleman from Virginia [Mr. WHITEHURST] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. BOLAND].

Mr. BOLAND. Mr. Speaker, I yield myself such time as I may require.

Mr. Speaker, I rise in strong support of H.R. 5164, the Central Intelligence Agency Information Act.

This bill represents an important convergence of necessary protection for true national security secrets and preservation of the public's right of timely access to Government information.

H.R. 5164's synthesis of these sometimes conflicting principles is a tribute to the hard work of the gentleman from Kentucky [Mr. MAZZOLI], the chairman of the Subcommittee on Legislation, and the gentleman from Virginia [Mr. WHITEHURST], the ranking minority member of the subcommittee. Mr. MAZZOLI was unable to be present to manage the bill today because he had to attend an immigration bill conference committee meeting, perhaps one of the most important conferences this year.

As always, the contributions of the gentleman from Virginia [Mr. ROBINSON], the ranking minority member of the committee, were quintessentially demonstrated by the unanimous support H.R. 5164 received from the Permanent Select Committee on Intelligence.

The bill thereafter was considered—and improved—by the Committee on Government Operations, where it was shepherded through by the gentleman from Oklahoma [Mr. ENGLISH], the chairman of the Subcommittee on Government Information, Justice, and Agriculture, and by the gentleman from Ohio [Mr. KINDNESS], the ranking minority member of the subcommittee.

The result of all these efforts, Mr. Speaker, is a bill unanimously endorsed by the Intelligence Committee and by all but one member of the Committee on Government Operations.

The administration supports the bill.

It has the firm support of the Central Intelligence Agency and the American Civil Liberties Union.

The CIA can of course be expected to be in favor ot this legislation.

The reason why the ACLU's endorsement is especially significant, however, is because that organization cannot be expected to endorse a bill that will result in less information being available to the public than is presently the case.

Such is indeed the policy of the ACLU.

Its endorsement is premised on the firm expectation—shared by the two committees which have worked on H.R. 5164—that the flow of properly releasable information to the public will be expedited by this bill.

It will, they believe, eliminate those requests from the queue that never result in the release of information but do consume many man-hours of search and review.

Yet, while faster CIA response to Freedom of Information Act requests was the reason the ACLU supported legislation of this type, the issue that convinced the ACLU leadership to endorse H.R. 5164 was its judicial review provisions.

Judicial review will de novo, as it is under the FOIA today.

The key point, however, is that judicial review will be no less restrictive than current litigation practices.

In effect, the bill codifies current FOIA reality for CIA cases.

This is because litigants simply have not prevailed in seeking access to the kind of information to be found in purely operational files. And, it is the judgment of your committees that such information ought not to be made public.

The ACLU has accepted the legitimacy of the bill's definition of operational files. That acceptance follows 10 years of actual, practical litigation experience that confirms that courts agree with the CIA on withholding such information from the public.

Mr. Speaker, that situation won't change, but neither will CIA's backlog until some relief is provided.

More money and personnel won't deplete the growing queue of FOIA requests since only experienced CIA operations officers are qualified to properly review material from operational files.

These people are unique because of their experience and special knowledge. They have other important tasks to do. If they can be freed from the laborious review of files that never are released, other requests will be handled more quickly.

At the same time, no less information will be released to the public than if a search has been made.

Mr. Speaker, it has been suggested that those who contest by lawsuit CIA practices under this bill must prove CIA activities violate its provisions before they can seek to raise such issues.

"A real catch-22," the critics claim, and they add that regular discovery isn't available to assist such litigants.

That is simply wrong. Plaintiffs don't have to prove their case before they file it, but they must show some support for their allegations. After all, the object of the bill is to release the CIA from the obligation to search its operational files.

If mere allegation will force a search to prove that a search isn't required, that is a catch-22 of real proportions.

Further, discovery in FOIA suits under this bill will be limited only with respect to two new types of allegations—allegations which this legislation makes it possible for plaintiffs to raise when suing CIA.

Questions involving all other complaints are subject to existing discovery rules and case law.

Mr. Speaker, it is true that under this bill, FOIA litigants likely will be unable to reach documents in CIA operational files. Their chances under present law are no better.

What is preserved is the essence of effective judicial review now applied in national security FOIA cases.

If a plaintiff can offer some evidence that documents have been improperly filed in operational files, or files have been improperly designated as operational files, then the court must consider those issues.

That review will be a de novo review under the existing FOIA judicial review provisions. And what the plaintiff cannot see, the judge can if he believes he needs to see it to decide the case.

Although the bill encourages the resolution of such suits on the basis of written submissions, the court always has the power—as in any FOIA case—to see any document, examine any file.

"Judicial Discovery," if you will, and de novo judicial review are the cornerstone of FOIA review today, and they will remain the bedrock of review under H.R. 5164.

Mr. Speaker, there are other concerns that have been raised about this legislation. I include at the end of my statement a response to these allegations. These responses show, I believe, that the bill before the House has carefully covered the important right to information of the American people.

It protects that right. It also protects intelligence information that should not be—and has not been—revealed publicly.

The balance struck between these two concerns has stood the test of intense scrutiny. Most importantly, it is a balance that will survive the test of time, because it advances the public interest of the Nation.

It deserves the support of this House.

ATTACHMENT

Allegation: H.R. 5164 would effectively bar public access to almost all of the CIA's operational files. Had this law been part of the original FOIA legislation, it is likely that the American people would never have learned of the numerous illegal undertakings by the agency, at home and abroad, that have come to light in recent years.

Response: There never has been any public access to CIA operational files. No meaningful information from such files has ever been released pursuant to any FOIA request. The revelations of CIA illegalities and improprieties, with one exception, came from the Rockefeller Commission, the Pike Committee, the Church Committee, and through leaks to investigate reporters, not through FOIA. The one exception, additional information concerning CIA drug experiment programs which was obtained through an FOIA request, would still be accessible because the issue has been the subject of both CIA and congressional investigations and because, in any case, the files from which the drug experiment information was obtained do not meet H.R. 5164's definition of operational files. This issue was specifically examined by the Intelligence Committee and the Government Operations Committee. At the Committee's request, CIA examined a very long series of examples of previous FOIA released documents relating to past CIA illegalities and improprieties. The review showed that the same material would still be released under H.R. 5164. This review is publicly available in the published hearings on H.R. 5164.

Allegation: The most alarming provisions of H.R. 5164 are those relating to the all-im-

portant judicial review. If the CIA were to improperly withhold information from disclosure, the ability of the person filing the FOIA request and of the courts to compel disclosure are so restricted by H.R. 5164 as to be rendered meaningless. For example, the bill would establish a Catch 22 whereby a requester could not use the FOIA to secure most relevant CIA documents unless he or she could convince an oversight agency or committee to investigate the specific subject of the request.

Response: The ACLU fully supports the bill and the judicial review provision. This support was reaffirmed as recently as Friday, September 14, by ACLU Executive Director Ira Glasser. Further, the "Catch-22" is no catch at all because the "investigations" section was only added as an extra precaution: in most cases, information searchable because of the investigations exemption would also be searchable because of the first person request exemption and because such information would be duplicated in non-operational files. Moreover, as the Intelligence Committee report notes, individuals can, in appropriate circumstances, trigger internal CIA investigation of illegalities or improprieties; thus, related records would become open to search under the investigations exemption.

Allegation: Moreover, in prohibiting the plaintiff's use of depositions and interrogatories, H.R. 5164 would severely limit the gathering of information by "discovery," even under close court supervision to protect sensitive information. The bill would also: alter normal rules of federal evidence law in unprecedented ways; eliminate, in almost all cases, the ability of the courts to review contested information; and, even if the court were to find the CIA had willfully violated the law, remove the courts' power to impose legal sanctions on the agency.

Response: The bill only prohibits use of depositions and interrogatories when the legal dispute concerns the two narrowly focused issues of whether a document has been improperly filed or a file has been improperly designated as operational, two new issues which can arise in CIA FOIA cases due to H.R. 5164. Even as to these issues, the Court may compel the production of testimony or documents to aid it in deciding the case, and the plaintiff, as noted in the House Intelligence Committee Report, is free to make recommendations to the court on what the court should seek. It is important to note as a practical matter that, in existing CIA FOIA cases in which plaintiffs seek discovery from the CIA, the CIA seeks, and almost invariably obtains, protective orders severely restricting or prohibiting discovery from CIA.

As to alleged alteration of "normal rules of federal evidence law" the Intelligence Committee Report on page 33 very clearly states: "Nothing in H.R. 5164 in any way affects the law of evidence," and nothing in the bill addresses any rules of evidence. The bill only addresses the standard of review, which is *de novo*, and a few special procedural rules, but does not change existing rules concerning what is relevant, probative, or admissible to prove any proposition in a lawsuit. Existing rules of evidence will continue to apply.

Finally, as to the Court's alleged inability to review the information sought by the FOIA requester, the Intelligence Committee Report, on page 33, states:

"Thus, when necessary to decision, the court may go beyond sworn written submission to require the Agency to produce additional information, such as live testimony, or the court may examine the contents of operational files. As an example, if the propriety of the exemption of an operational file is properly drawn into question under paragraph 701(f)(4), and the court concludes after considering the various sworn written submissions of the parties that it is necessary to decision that the court examine the content of the operational file, the court may do so."

Mr. Speaker, I reserve the balance of my time.

Mr. WHITEHURST. Mr. Speaker, I yield such time as he may consume to my colleague, the gentleman from Virginia [Mr. ROBINSON].

Mr. ROBINSON. I thank the gentleman for yielding time to me.

Mr. Speaker, it is with a great deal of pleasure that I rise in support of H.R. 5164, the Central Intelligence Agency Information Act. The Permanent Select Committee on Intelligence and the Committee on Government Operations have drawn this bill carefully to accommodate both the informational needs of the public and the operational security needs of the Central Intelligence Agency. The bill will contribute to the achievement of two important goals—an informed citizenry and an effective foreign intelligence agency.

The legislation has been designed to achieve three important objectives.

First, the bill will relieve the CIA from an unproductive FOIA requirement to search and review certain CIA operational files consisting of records, which, after line-by-line security review, almost invariably prove not to be releasable under the FOIA.

Second, the bill will improve the CIA's ability to respond to FOIA requests in a timely and efficient manner, while preserving undiminished the amount of meaningful information releasable to the public under the FOIA.

Third, the bill will provide additional assurances of confidentiality to individuals who cooperate with the United States as CIA sources.

The House owes a debt of gratitude to the leaders of the committees and subcommittees whose painstaking work had enabled this legislation to come to the House floor. I would like to acknowledge the leadership and contributions of:

Chairman BOLAND of the Permanent Select Committee on Intelligence;

Chairman MAZZOLI and ranking member WHITEHURST of the Intelligence Subcommittee on Legislation;

Chairman BROOKS and ranking member HORTON of the Committee on Government Operations; and

And Chairman ENGLISH and ranking member KINDNESS of the Government Operations Subcommittee on Government Information.

These distinguished Members of the House forged a strong, bipartisan consensus of support for H.R. 5164. It is a testimony to their wisdom, patience, and legislative skill that they have developed a bill strongly supported by a diverse group of organizations which includes both the Central Intelligence Agency and the American Civil Liberties Union.

Mr. Speaker, this bill carefully protects the existing rights of the public to obtain information from the CIA under the Freedom of Information Act and at the same time relieves the CIA of unproductive administrative processing burdens that contribute nothing to the FOIA goal of an informed citizenry. I urge my colleagues to vote to suspend the rules and pass H.R. 5164.

□ 1310

Mr. BOLAND. Mr. Speaker, I yield such time as he might require to the gentleman from Oklahoma [Mr. ENGLISH], who is chairman of the Subcommittee on Government Information, Justice, and Agriculture.

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

Mr. ENGLISH. Mr. Speaker, I rise in support of H.R. 5164.

The Central Intelligence Agency Information Act exempts specifically defined CIA operational files from the search and review requirements of the Freedom of Information Act. These files document intelligence sources and methods, and, because of the sensitivity of the information, little has ever been made public.

Although H.R. 5164 provides the CIA with a limited exemption from the FOIA, the legislation does not make any change in the basic policy on which the FOIA is based. In fact, the bill reaffirms that the principles of freedom of information are applicable to the CIA.

The bill leaves the CIA subject to the FOIA. It confirms that the CIA maintains information about which the public may legitimately inquire. It recognizes that access to information is important in maintaining the public's faith in Government agencies, including the CIA.

H.R. 5164 is consistent with the purposes of the FOIA because it will not interfere with the processing of requests for major categories of CIA information. The only CIA records that will be subject to withholding under H.R. 5164 are those records that are currently exempt today.

Because the amount and type of information that must be disclosed will not change, H.R. 5164 is essentially a procedural reform of the CIA's freedom of information responsibilities. The bill will make it less burdensome for the CIA to deny access to files that are already exempt. Instead of reviewing records in operational files on a page-by-page, line-by-line basis, the CIA will be able to deny most requests for operational files in a categorical fashion.

The result will be more efficient handling of FOIA requests by the CIA. For those seeking CIA records, increased efficiency will mean faster processing, and a substantial reduction of response time has been promised by the CIA. This will restore the useful-

ness of the FOIA without any meaningful limitations on the amount of information that will be released.

In short, H.R. 5164 will make things better not only for the CIA but also for those who use the FOIA to obtain records from the CIA.

The Government Operations Committee made only two amendments to the bill as reported by the Permanent Select Committee on Intelligence. One amendment requires the CIA to file an unclassified report on FOIA processing every 6 months for the 2 years following enactment. This report will permit the public and the Congress to determine whether the CIA is living up to its commitment to improve the speed of its FOIA operations.

The second amendment clarifies the relationship between the Freedom of Information Act and the Privacy Act of 1974. There has been unnecessary confusion lately about how these two laws fit together. The committee amendment clarifies the original congressional intent and restores the interpretation that had been in place ever since enactment of the Privacy Act in 1974.

This clarification is necessary because H.R. 5164 relies on the continued ability of individuals to use the FOIA to seek access to CIA records about themselves. Without the Privacy Act amendment, the right of access contemplated by H.R. 5164 would be unenforceable in court.

The Privacy Act amendment included in H.R. 5164 is the text of H.R. 4696, a bill that I introduced along with Representatives BROOKS, HORTON, KINDNESS, and ERLENBORN. The amendment makes it crystal clear that the exemptions of the Privacy Act do not authorize the withholding of information that would otherwise be available if requested under the FOIA by the subject of the record. The effect of the amendment is to codify the holding of the D.C. Circuit Court of Appeals in *Greentree* v. *U.S. Customs Service,* 674 F.2d 74 (1982), and to reject recent amendments to the Department of Justice FOI and Privacy Act regulations and to the OMB Privacy Act Guidelines. The holding in Greentree and the original OMB Privacy Act guidelines reflect the intent of Congress when the Privacy Act 1974 was passed.

The clarification of the relationship between the Privacy Act and the FOIA will not only affect access requests made at the CIA but will have an identical effect on requests made at all other agencies subject to the FOI and Privacy Acts. In removing any ambiguity that may surround the relationship of the Privacy Act to the FOIA, we are specifically taking steps to apply a uniform interpretation to the records of all Federal agencies. To do otherwise would only increase uncertainty, confusion, and litigation.

With the amendment to the Privacy Act made by H.R. 5164, individuals will continue to be able to make requests for records about themselves using the procedures in either the Privacy Act, the FOIA, or both. Agencies will be obliged to continue to process requests under either or both laws. Agencies that had made it a practice to treat a request made under either law as if the request were made under both laws should continue to do so.

H.R. 5164 is the product of several years of effort by the CIA, House and Senate Intelligence Committee, and others, including the American Civil Liberties Union. It was hard work, and everyone associated with the bill deserves to be congratulated. I especially want to commend Representative MAZZOLI and Chairman BOLAND and the other members of the Intelligence Committee for their careful drafting and excellent legislative report.

I think that some lessons regarding the FOIA in general can be drawn from the consideration of H.R. 5164. First, although the bill is drafted as an amendment to the National Security Act, it was jointly referred to the Government Operations Committee as well as the Intelligence Committee. This was appropriate because the bill has a direct impact on the FOIA. Both committees held public hearings, and all interested parties had an opportunity to comment.

For these reasons, H.R. 5164 should be a model for the consideration of legislation that affects the availability of information under FOIA without amending the FOIA itself. The prompt action taken by the Government Operations Committee demonstrates a willingness to consider carefully written and narrowly drawn proposals that increase the efficiency of the FOIA process without interfering unduly with public access to information.

I urge the adoption of H.R. 5164.

Mr. WHITEHURST. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. YOUNG].

Mr. YOUNG of Florida. Mr. Speaker, I rise to urge my colleagues to support H.R. 5164, the CIA Information Act, to protect the operational secrecy of CIA human intelligence activities.

Several of the Members have emphasized that CIA responses to FOIA requests will be faster and more efficient when H.R. 5164 is implemented, and that no meaningful CIA information will cease to be available to the public under FOIA because of enactment of H.R. 5164. This is, of course, true, and these are important reasons to support the bill. But I believe there is an even more important reason for supporting the bill. We must reassure CIA sources abroad who cooperate with the CIA that the United States can keep secrets. This bill will send a message to CIA sources that they are safe in trusting the United States.

To carry out its intelligence activities, the CIA depends upon sources, including both individual agents and intelligence services of cooperating nations, for information and operational assistance. CIA human sources, the recruited agents, are a vital part of the Nation's intelligence program, in part because they can often provide the key pieces of information U.S. intelligence agencies need on the intentions of foreign powers.

To secure the cooperation of a well-placed individual who can provide information or operational assistance, the Central Intelligence Agency officer who will work with that individual must establish with him a secret relationship of great trust. The source places his life and his livelihood in the hands of the CIA when he agrees to serve as a source of information or operational assistance for the U.S. Government. If the fact of the source's cooperation with the CIA becomes known, the United States loses a source of great value in ensuring the security of our Nation. The source loses his freedom, and in many parts of the world, his life. The critical element in establishing and maintaining the cooperation of a source is the source's perception that he can safely cooperate with the CIA because the CIA can protect the secrecy of the relationship.

The CIA establishes similar relationships based on trust with the intelligence and security services of cooperating foreign nations. These services share intelligence with the CIA and assist the CIA in the conduct of its intelligence activities worldwide. These services will cooperate only if the United States protects the secrecy of the liaison relationship. These services will not share information with the CIA if such sharing places their sources at risk. Moreover, it is in the nature of relations among nations that they do not publicly acknowledge cooperation with other nations in the conduct of intelligence activities. Thus, even those nations whose intelligence services are widely presumed to engage in some form of cooperation with the CIA abroad would remain quite sensitive to any U.S. acknowledgment of the existence of such a relationship.

In the dacade since the 1974 amendments to the Freedom of Information Act, the CIA has experienced difficulty traceable in part to that act in recruiting sources. The CIA has testified repeatedly that potential sources of great value have declined to cooperate with the CIA from fear that our Government cannot protect the secrecy of their relationship to the CIA from disclosure under the FOIA. The CIA also testified that existing sources terminated cooperation from the same fear, and that intelligence services of other nations have expressed concern about cooperating with the United States due to the application of the Freedom of Information Act to the CIA.

The perception of these CIA sources of information and operational assistance is not unfounded. Errors can

occur, and have occurred, in the processing of FOIA requests. The risk of disclosure is not as great as they may perceive it to be since FOIA exemptions exist for source-revealing information. It is, however, the source's perception, and not the actual state of affairs, which governs the willingness of the source to cooperate with the CIA.

H.R. 5164 contributes substantially to resolving the problem of the perception by CIA sources that the CIA may not be able to protect the secrecy of their relationship from FOIA disclosure. The bill withdraws CIA files which directly concern intelligence sources and methods from the FOIA process. The risk of accidental or unknowing disclosure or source-revealing information will be largely eliminated, because the sensitive CIA operational files documenting the operational activities of sources will no longer be part of the FOIA process. With enactment of H.R. 5164, those who cooperate with the Central Intelligence Agency in the conduct of intelligence activities can rest assured that the CIA can maintain inviolate the confidentiality of their relationsip to the U.S. Government.

Mr. Speaker, I urge my colleagues to vote in favor of passage of H.R. 5164.

□ 1320

Mr. BOLAND. Mr. Speaker, I yield such time as he may require to the distinguished gentleman from New York [Mr. WEISS].

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

Mr. WEISS. Mr. Speaker, I want to express my appreciation to my distinguished colleague for his courtesy.

Mr. Speaker, I rise in strong opposition to H.R. 5164, the Central Intelligence Agency Information Act.

This legislation would dangerously intrude on the power of the courts to review the actions of the Central Intelligence Agency and would likely limit legitimate public access to CIA documents. It would place excessive trust in an agency that only a few months ago was caught withholding vital information from Congressional Intelligence Committees.

Had this legislation been part of the original Freedom of Information Act, it is possible the American people never would have learned of the agency's numerous illegal undertakings, at home and abroad, that have come to light in recent years.

For example, we first learned that the agency spied on civil rights leader Martin Luther King, Jr., from documents obtained through FOIA. The same is true of the CIA's recruitment of American blacks in the late 60s and early 70s to spy on Black Panthers in this country and in Africa.

Author Stephen Schlesinger, seeking material on the CIA-backed coup in Guatemala in 1954, after being told by the CIA that 165 pages of material comprised the entire file, learned of the existence of 180,000 pages of information that the CIA was withholding, only after filing a FOIA suit.

And the National Student Association learned through the FOIA that the CIA may have continued its covert relationship with the association years after the two had signed a separation agreement.

Enactment of H.R. 5164 will make future discoveries of this nature more difficult—if not impossible—to uncover.

Most alarming are the unique provisions in this bill that would essentially prevent both the plaintiff and the courts from forcing the CIA to disclose improperly withheld information.

I am aware of no other law on the books that bars virtually all "discovery"—the pretrial gathering of evidence—by a litigant in a suit against a Government agency, thereby requiring a plaintiff to prove his case on the basis of personal knowledge or other admissible evidence already in his possession; or that bars a Federal court from imposing penalties on a Government agency if it finds the agency guilty of illegally withholding information. Sections 701f3 and 701f6 of this bill would.

The court's ability to conduct an independent review of the contested documents would be curtailed by section 701f4A, which permits the CIA to substitute a written statement in lieu of the actual documents. The court may not even require the CIA staff to go back and review the documents itself in preparation of the written statement (section 701f4B).

If the House is of the mind to restrict the public's access to information, we should do it directly, without tying the hands of the courts to enforce the laws we enact.

It is not difficult to see why groups like the Society for Professional Journalists, American Historical Association, Radio-Television News Directors Association, Newspaper Guild, and Reporters Committee for Freedom of the Press are opposing this bill.

The CIA's record of responding to requests under the Freeom of Information Act has been appalling. The 2- to 3-year backlog that this bill seeks to erase is among the worst records in the Federal bureaucracy. Individuals filing FOIA requests commonly face a host of tactics that delay and impede legitimate access to information. The agency has consistently ignored the mandate of the Congress to submit, except in limited circumstances, to the scrutiny of public review.

Moreover, the necessity for increased secrecy has not been justified. The Freedom of Information Act already adequately protects properly classified foreign intelligence information. In those cases in which the CIA refused an individual's request for information, the individual may ask for a judicial review that includes a closed session inspection of the documents in question. In the entire history of FOIA, judicial review has never resulted in the improper release of sensitive information.

The bill does retain access to operational files in three narrow categories—those containing subject matter under investigation by a congressional or agency oversight panel, for example. But that provision forces a requester to somehow trigger an investigation before gaining access to the information. Some scholars believe this provision to be unconstitutional.

One last concern: While H.R. 5164 would instruct the CIA Director to review the status of exempted materials every 10 years, there is no requirement that any of the documents be released at that time—or ever. Without a time limit on exemptions, the American public may forever be denied the change to fully evaluate the CIA's role in our Government and history.

Few would dispute that a legitimate need exists to protect some CIA information from public release. But restricting public access should be the exception, not the norm.

The American public would be better served by enacting legislation clarifying the limited circumstances under which information could be withheld by the CIA. This was, in fact, proposed by former Federal district court judge and our former colleague Congressman Richardson Preyer in 1980. He advocated exempting from disclosure, information provided to the CIA in confidence by a secret intelligence source or a foreign intelligence service. Sensibly, his bill would not have tampered with judicial review.

I believe the CIA requires even closer oversight by the Congress, the courts, and the American people. Given its past record, it is no wonder the CIA is so eager to limit review of its actions.

I urge my colleagues to join me in voting against this unnecessary increase in secrecy.

Mr. WHITEHURST. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. KINDNESS].

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

Mr. KINDNESS. Mr. Speaker, I thank the gentleman from Virginia for yielding this time.

Mr. Speaker, I want to express my support of H.R. 5164.

I will not reiterate what has already been said about the provisions of this bill. It is a bill which has undergone careful scrutiny and drafting by the Intelligence Committees of the Senate and House and your Committee on Government Operations here in the House.

This bill is the product of a consensus which developed after some 9 years of experience in litigating Freedom of Information Act lawsuits arising from requests for information di-

rected to the Central Intelligence Agency. During those years of litigating, a pattern became clear, and that was that certain operational files of the CIA could not be opened to public scrutiny.

Meanwhile, other requests for information which, to some extent, could be released were caught in the long lineup of those requests for access to information in operational files.

While the pattern became clear some years ago, I took some time for a consensus to develop on the means of speeding up access to CIA files without jeopardizing either the current degree of access or the agency's essential functions.

The experience of the Agency and of those who have sought to obtain information from the Agency under the Freedom of Information Act has been a great teacher. Four years ago, at the time our Government Operations Subcommittee on Government Information held hearings on legislation similar in concept and structure to H.R. 5164, I do not believe that any of us, either we in the Congress or the CIA or the ACLU and others who request information, knew quite how to adjust the CIA's obligation under FOIA.

At the time of those hearings, judicial review was a critical issue. The questions raised at that time about the extent of judicial reviewability of CIA compliance with the FOIA and the authority granted in this legislation have been dealt with fully, and I believe, fairly in this bill.

Section 701(f) provides for de novo judicial review pursuant to the provisions of the Freedom of Information Act with very limited exceptions. Those exceptions are fair, they are limited, they are clearly stated in the language of the bill as well as being clearly explained in the report of the Permanent Select Committee on Intelligence. I recommend particularly that all who are interested in obtaining information from the CIA pursuant to the Freedom of Information or Privacy Acts to read the bill and the accompanying reports.

I would also like to comment, Mr. Speaker, specifically about the amendment added to the bill by your Committee on Government Operations intended to clarify the relationship between the Freedom of Information Act and the Privacy Act.

It was unfortunate that a couple of circuit courts of appeals took it upon themselves to raise the issue of the relationship between the two acts and resolve it in a way not intended by the Congress. It was even more unfortunate that after 9 years of adherence to a policy consistent with congressional intent both the Department of Justice and the Office of Management and Budget last March decided to follow those misguided courts of appeals and reversed their regulations and policy guidance.

I think it is appropriate that we in the Congress act to clarify the relationship between the Freedom of Information Act and the Privacy Act and that this legislation is an appropriate vehicle in which to do that.

As one who has been involved in efforts to amend the Administrative Procedure Act over recent years, efforts which have been referred to as "regulatory reform," I am particularly troubled by agencies reversing long-standing regulations or policy guidance where there has been no change in the underlying statute by the Congress or no change in the circumstances. And, if some courts do not interpret the statutes as we in the Congress intended, I believe it is incumbent upon the Congress to clarify the law, removing any ambiguity which may exist.

This bill is an appropriate vehicle in which to make this clarification. The issue is clearly raised by this legislation. And one need not harbour feelings of mistrust toward the CIA in order to see the issue as it is raised in section 701(c)(1), the exception designed to preserve an individual's access to information maintained about him- or herself.

I understand that there is a Supreme Court case pending to resolve differences between several circuit courts of appeals on this issue of statutory interpretation. We in the Congress should save the Court the trouble and clarify the law on this point.

I urge my colleagues to support this bill and hope that it will be cleared quickly by the other body for the President's signature.

There are some points that ought to be clarified for those who might have some concern about points that have been raised in the discussion by the gentleman from New York. It was pointed out that the bill would in the opinion of the gentleman dangerously intrude upon the power of the courts to review CIA activity, paraphrasing the gentleman's expression of that point, but I would point out to my colleagues that it is clear in section 701(c)(3) of the bill before us that there is not such an intrusion. Opinions might differ, but at least the clear wording of the bill points out that nothing would preclude or prohibit the inquiry by the court into the subject matter that is the subject for search and review if that is a specific subject matter of an investigation by the Intelligence Committees of the Congress, the Intelligence Committee's Oversight Board, the Department of Justice, the Office of General Council of the Central Intelligence Agency, the Office of Inspector General of the CIA or the Office of the Director of the CIA, for any impropriety or violation of law or Executive order or Presidential directive in the conduct of an intelligence activity, and further, that material would be subject to review if it involves any special activity, the existence of which is not exempt from disclosure under the provisions of section 552 of title V of the code, the Freedom of Information Act.

Therefore, I feel as others do, that all of the cases that could be cited as potential areas of abuse have been covered by these exceptions that are made in section 701(c).

There are other points that have been raised that I think I might clarify for the record.

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There has been criticism of section 701(f), various parts of it, but particularly subsection 4(B) pointing out that the court may not order the Central Intelligence Agency to review the content of any exempted operational file or files in order to make the demonstration required under subparagraph (A) of that same section, unless the complainants dispute the Central Intelligence Agency's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

In other words, this is really a codification of the existing case law. The court is not under present practice going to review the content of an exempted operational file unless someone has something substantial to indicate that there is, in fact, reason to do so.

I think on balance the bill before us has not only done an excellent job of creating the situation that will reduce the caseload or the burden, the backlog, and thus allow more Freedom of Information Act requests to be dealt with promptly, but it has protected the necessary elements and I think indeed, as the gentleman from Florida has pointed out, improved the ability to protect that which needs to be protected for the purposes of being able to carry out our intelligence activities, and that is the integrity of the operational files of the CIA.

I think we have an excellent bill with an unusual history of agreement and consensus about two committees that are most deeply concerned with the matter, the Freedom of Information Act and the Intelligence Information Act activities.

I would hope that all of our colleagues would join in support of H.R. 5164, and I yield back the balance of my time.

Mr. BOLAND. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

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

(Mr. WHITEHURST asked and was given permission to revise and extend their remarks.)

Mr. WHITEHURST. Mr. Speaker, I rise in support of H.R. 5164, the CIA Information Act. This bill has achieved wide support in the Congress because it was drafted carefully to address successfully the concerns of all who are interested in the legislation. Even on the thorniest issue, that of

the nature of judicial review of CIA action to implement the legislation, a balanced position has been achieved. The bill has been drawn carefully to ensure that the operational security needs of the CIA are met and that the current statutory right of individuals to obtain information under the FOIA from the CIA is preserved. The administration supports enactment of this bill.

The issue of judicial review of CIA implementation of the bill provides a good example of the extraordinary good faith efforts of all concerned to develop legislation to which everyone can give full support. Initially, the positions of the three organizations which expressed particular interest in the judicial review provisions were far apart:

The Central Intelligence Agency initially believed that any judicial review was inappropriate and that congressional oversight alone would provide the mechanism for ensuring faithful CIA implementation of the bill.

The American Bar Association believed that judicial review was appropriate, but that it should be limited to determining that the action of the Director of the Central Intelligence is not frivolous, a very deferential standard of judicial review.

The American Civil Liberties Union believed that judicial review was essential, and that such review must take place under the existing FOIA substantive judicial review provisions requiring de novo judicial review.

The committee concluded without difficulty that judicial review of CIA implementation of H.R. 5164 was important to ensure public confidence in that implementation. Precisely defining the nature of that review took considerably greater time and effort.

After a great deal of discussion, it became clear that the primary concern of the CIA with the judicial review provisions was procedural, while the primary concern of the American Civil Liberties Union was substantive. The CIA feared that the judicial review requirements would ultimately undo the benefits the legislation was designed to achieve by requiring CIA upon a mere, unsupported allegation of CIA error by a disappointed FOIA requester to conduct FOIA searches of exempt operational files and line-by-line reviews of exempt records in order to explain the CIA's actions to judges. The ACLU, on the other hand, was concerned that specifying a deferential standard of review, which would require courts to uphold CIA action upon determining that such action was merely "nonfrivolous" or "not arbitrary or capricious," would signal the courts to conduct very little review at all, since the courts have interpreted the existing de novo FOIA substantive review standard to involve a significant amount of deference.

These two positions, which initially appeared to be incompatible, were in fact reconcilable, and resulted in section 701(f) of H.R. 5164. Section 701(f) provides that judicial review of CIA action to implement section 701 of the bill will be conducted under the existing judicial review provision of the FOIA; that is, under the FOIA de novo substantive standard of judicial review. Section 701(f) also, however, contains several special procedural requirements which ensure that the process of judicial review will not undo the benefits which the bill is designed to produce of reducing an inappropriate FOIA processing burden on the CIA.

This type of reconcilation of positions of interested parties was the hallmark of development of H.R. 5164. I believe this bill reflects the legislative process at its best.

H.R. 5164 ensures that existing public access to CIA records under the FOIA is not impaired, while improving CIA operational security and CIA responsiveness to FOIA requests.

I urge my colleagues to support enactment of H.R. 5164.

● Mr. CONYERS. Mr. Speaker, I rise in strong opposition to H.R. 5164, the Central Intelligence Agency Informatioin Act. This act would grant the Central Intelligence Agency an unprecedented exemption from the application of the Freedom of Information requests for its "operational" files.

The advocates of H.R. 5164 are using a political tactic which has become quite popular during this administration. It is a rather facile strategy: when you want to make major changes in public policy but recognize that they will not go unchallenged by the American people, simply offer your proposals under the guise of mere procedural reform. This gambit has been used many times in the past 4 years. When the President did not like the proposals of the Commission on Civil Rights, he did not publicly announce his disagreements with the Commission and offer any kind of justification for his positions; rather, he simply tried to change the method with which appointments are made to the Commission—conveniently changing their recommendations at the same time. Similarly, when the President wanted to make major cuts in spending for health and education, he hid the cuts in his New Federalism program of block grants, hoping that a change in the method of disbursing funds would detract from the substantial change in the amount of funds disbursed. This administration has persuaded the Supreme Court to overturn its own precedents regarding the exclusionary rule by obtaining exceptions when mistakes—that is, violations—are made in "good faith." In each of these examples, the pattern is the same. A major shift in policy was cloaked in a "technical" change. It is left to the opponents of the proposed change to spell out its actual effects.

In this case, the self-anointed target of bureaucratic efficiency is the Central Intelligence Agency. The CIA asserts that H.R. 5164 is warranted by the backlog of Freedom of Information requests at the Central Intelligence Agency, the interminable delay in the processing of such requests, and the rarity with which meaningful information is actually disseminated in accordance with these requests. The Agency is modestly offering a proposal to improve this situation: a request that its operational files simply be exempted from the Freedom of Information Act. Essentially, the CIA is asking us to respond to its current intransigence to and phobia of releasing information by enshrining it into law.

Why does the CIA consider the passage of this bill such a high priority? The Agency makes no claims that sensitive information is being released under current rules. The existing provisions of the FOIA make adequate provisions for national security. Not once in the history of the act has judicial review resulted in the improper release of sensitive information. The CIA instead asserts that an exemption is needed to remove a bottleneck of paperwork caused by the act. It is not concerned by the fact that such an argument would be absurd if used by most agencies. If the Social Security Administration was to claim that it was too overworked to process FOIA requests, Congress would properly seek a means to expedite the processing on a long-term basis. It would not offer reduced responsibility through an exemption from fundamental accountability as a solution. The CIA claims that it is unique because useful information is released so infrequently from operational files in response to FOIA requests. This cost-benefit analysis is simply not legitimate. In fact, the scarcity of information released by the Agency only makes that information all the more valuable. Moreover, our constitutional values will not allow us to place the elimination of some redtape in an Agency office above the right of citizens to even attempt to discover the activities of their own Government.

H.R. 5164 would have several chilling effects which belie the ostensibly innocuous goals claimed by its proponents. New obstacles to the release of information would be erected in the paths of FOIA requesters. Under this legislation, the Freedom of Information Act could be used to obtain CIA documents only after the applicant has persuaded an oversight agency or committee, on the basis of alleged illegality or impropriety on the part of the Agency, to investigate the specific subject addressed by the documents. As the CIA must realize, documents from the Agency are often the very information needed to establish the criteria for an investigation. In effect, the CIA would not even be required to consider releasing documents unless its activities in a certain area have already been established by a different

source of information. Even if an investigative body has been persuaded to initiate an inquiry into a certain subject, requests for CIA documents would be limited to those relevant to the "specific subject matter" of the investigation. Needless to say, the CIA would be very selective in determining what constitutes the "specific subject matter."

Finally, this bill would create another deterrent to citizen-initiated FOIA requests. There is no provision which would mandate the CIA to provide attorney's fees for a litigant who forces the Agency to comply with this legislation. This omission makes a challenge to the Agency by the vast majority of citizens in the United States financially impossible. The FOIA itself was rarely used before attorney's fees became the responsibility of any violator of the act.

The CIA argues that H.R. 5164 would not have an adverse effect upon the flow of information because few documents are released by the Agency under present regulations. This reasoning ignores the value of simply knowing that such documents exist. Under current law, the CIA must answer each FOIA request, if not by actually releasing materials, then by listing all existing documents and providing a justification for the withholding of these documents. The knowledge of the existence of such documents is by itself valuable to researchers and other FOIA applicants. Yet H.R. 5164 would remove this requirement, and with it, the ability of a citizen to even determine that he is the subject of files at the Agency.

H.R. 5164 would set a highly questionable precedent of self-regulation by an agency regarding compliance with the FOIA. In hearings before the Senate, representatives from the CIA testified that the Director of Central Intelligence alone would have the authority to designate files as being "operational" and thus subject to exemption from the FOIA. If such a designation was disputed in court, the CIA would need only submit a written statement reiterating its decision to the court, and would not be required to submit the disputed documents themselves for judicial review. In other words, the Director of the CIA would be answerable to no one for such a decision. The CIA has failed to demonstrate to Congress and to the American people that it can be entrusted with such a power. The recent mining of Nicaraguan harbors, as well as past activities directed against the Reverend Martin Luther King, Jr., and others in the civil rights movement prove that the CIA cannot be left to its own judgment concerning the propriety of its activities. If we grant the CIA this power of self-regulation, not only will we be granting the CIA a carte-blanche unwarranted by it's previous activities, we also will be inviting other law-enforcement agencies to seek this same exemption. Thus, we would be introducing a new and dangerous trend of curbing judicial review over executive agencies.

Proponents of H.R. 5164 claim wide support for their measure, but the support is shallow. The American Civil Liberties Union, whose support was crucial to the bill's success up to now, is now reconsidering its decision. H.R. 5164 is opposed by such groups as the Newspaper Guild, the Society of Professional Journalists, the Reporters Committee for Freedom of the Press, the Radio-Television News Directors Association, the American Historical Association, and the National Committee Against Repressive Legislation. The fact that this measure is being considered under suspension of rules is an indication that its backers realize that careful consideration of the bill would not be to its benefit.

By now, the actual motives behind this bill should be clear. The CIA feels that it is an opportune time to push through a bill which would not stand up to real scrutiny. I urge my colleagues to judge this bill on its actual merits, not on the desire for clean desks claimed by its proponents. H.R. 5164 represents an attempt to roll back the rights of information which have been obtained so recently, and the bill should be judged as such.○

○ Mr. STUMP. Mr. Speaker, H.R. 5164, the Central Intelligence Agency Information Act is the culmination of years of congressional effort to grapple with the problems the Freedom of Information Act poses for the Nation's primary foreign intelligence agency. Since 1977, subcommittees of the House and Senate Intelligence Committees, and of the House Government Operations Committee and the Senate Judiciary Committee, have held a number of hearings on these problems. These committees have all reached the conclusion that legislation to modify the application of the Freedom of Information Act to the CIA is required. Bills to make the necessary modifications have been under consideration in the Congress since 1980. The many views presented to the Congress concerning the legislation have all been considered at great length. H.R. 5164 is the carefully crafted result of these years of congressional deliberation.

The bill modifies the application of the FOIA to the CIA by removing specifically defined CIA operational files from the FOIA process. These files hold the CIA's most sensitive secrets, such as the names of CIA sources abroad or the high technology methods for overhead reconnaissance of the military installations of hostile nations. The secrets contained in these operational files are, of course, kept secret under the current exemptions in the FOIA for classified information and information relating to intelligence sources and methods. That is precisely the point of H.R. 5164—it makes no sense to continue to require CIA personnel to conduct FOIA security reviews of these records on a line-by-line basis in response to FOIA requests, since experience has shown that nothing meaningful can ever be released to the public from these operational files anyway. The substantial amount of time currently required by statute to be wasted in conducting the line-by-line review of these records which can't be released, produces a big FOIA backlog at CIA which prevents CIA from processing in a timely fashion FOIA requests for material which can be released.

H.R. 5164 will take care of the problem. As a result of H.R. 5164:

Taxpayers' money will no longer be wasted by requiring CIA officers to spend their time conducting FOIA reviews of sensitive operational records that cannot be released to the public under the FOIA.

CIA sources abroad will be reassured that the United States can keep secret the fact of their cooperation with the CIA.

Skilled CIA operations officers who are now diverted away from their operational duties to conduct FOIA reviews will devote themselves full-time to the intelligence work they are hired, paid, and trained to do.

The risk of accidental or unknowing disclosure under the FOIA of sensitive operational information will be reduced.

CIA backlogs in FOIA processing will be reduced, improving the timeliness of CIA responses to FOIA requests from the public.

H.R. 5164 has been drawn carefully to ensure that these goals will be achieved without diminishing the amount of meaningful information currently available to the public under the FOIA. The bill meets the Nation's needs for both an effective intelligence agency and an informed citizenry.

I urge my colleagues to vote to suspend the rules and pass H.R. 5164.○

○ Mr. HORTON. Mr. Speaker, I rise in support of H.R. 5164, the Central Intelligence Agency Information Act.

H.R. 5164 provides a limited exemption from the Freedom of Information Act [FOIA] for specifically defined operational files maintained by the Central Intelligence Agency. The bill will relieve the CIA from the requirement under the FOIA to search and review records in these operational files that, after line-by-line review, almost invariably prove to be exempt from disclosure under the FOIA. The bill will thereby improve the ability of the CIA to respond to FOIA requests from the public in a more timely and efficient manner, without reducing the amount of meaningful information releasable to the public.

The bill contains several exemptions which will assure that requests for certain types of information will be fulfilled, notwithstanding the fact that those records are maintained in operational files. Those exemptions are for: First, information concerning U.S.

citizens and permanent resident aliens requested by such individuals about themselves; second, information regarding covert activities the existence of which is no longer classified; and third, information concerning any CIA intelligence activity that was improper or illegal and that was the subject of an investigation for alleged illegality or impropriety.

The Committee on Government Operations amended the bill to provide an additional means of overseeing the CIA's compliance with FOIA during the first 2 years of implementation of this legislation. The committee also added an amendment that guarantees the effectiveness of the exemption mentioned above for information requested by individuals about themselves. This amendment, contained in section 2(c) of the bill, clarifies the relationship between the Freedom of Information Act and the Privacy Act to state explicity in the law that no agency can use the Privacy Act as a basis for denying an individual access pursuant to the Freedom of Information Act to information in Government files about him or herself. This was the understanding of the Congress when the Privacy Act and the 1974 amendments to the Freedom of Information Act were enacted. But that interpretation has been called into question recently by a couple of circuit court of appeals decisions, and by a change in policy guidance from OMB and regulations by the Department of Justice. By this amendment, we are simply maintaining the status quo which existed before the Justice Department and OMB issued their unwise reversals of policy.

I am glad to support this bill and urge my colleagues to do likewise. I hope that this bill in its current form can be quickly cleared for the President's signature.●

● Mr. MAZZOLI. Mr. Speaker, H.R. 5164 is a narrowly focused measure which provides the CIA with limited, but important, relief from Freedom of Information Act processing requirements, while preserving undiminished the amount of meaningful information now releasable by the CIA to FOIA requesters.

H.R 5164 has been favorably reported by both the Intelligence Committee and the Committee on Government Operations, and is supported by both the CIA and the ACLU. A similar measure passed the other body last November.

This measure does not exempt the CIA from the Freedom of Information Act. In the past the CIA had sought to convince the Congress and the Intelligence Committees of the need for such a total exemption—but could not make its case. We are here today because the CIA now recognizes that it is neither feasible nor desirable for it to be totally excluded from FOIA coverage. We are also here because some of the Agency's outside critics have agreed that it is reasonable and prudent to afford the CIA some FOIA relief, and have made significant contributions to the drafting process. And, we are here today because the legislative effort on this measure has been characterized by a non-partisan, cooperative spirit from the beginning.

The Freedom of Information Act currently applies to the Central Intelligence Agency in precisely the same manner that it applies to other Federal agencies. Thus, in response to a request for reasonably described records, the CIA must: First, search its records systems for records responsive to the FOIA request; second, review the responsive records retrieved from its files to determine which records fall within FOIA exemptions and need not be disclosed; and third, disclose all reasonably segregable portions of the responsive records which do not fall within one or more of the nine FOIA disclosure exemptions.

A decade of experience has shown that most CIA operational files—those which contain the most sensitive information directly relating to intelligence sources and methods—contain few, if any, items which need to be disclosed to requesters under the FOIA. The records contained in these operational files fall within the FOIA exemptions protecting classifed information and information relating to intelligence sources and methods.

Nevertheless, the CIA must search and review these records in response to FOIA requests on a line-by-line, page-by-page basis.

This process of searching and reviewing CIA operational records systems costs money and absorbs a substantial amount of time of experienced CIA operational personnel. This considerable expenditure of time and money usually contributes nothing to the goal of the FOIA of an informed citizenry since routinely almost no records are released to the public after this detailed search.

In fact, these search procedures actually hinder achievement of that goal because the time-consuming process of reviewing sensitive CIA operational records creates 2 to 3 year delays in the Agency's ability to respond to FOIA requests for information which is releasable.

H.R. 5164 would permit the Director of Central Intelligence to exempt operational files from the search and review process of the FOIA.

Operational files are defined in the bill as: First, files in the Directorate of Operations "which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services"; Second, files in the Directorate for Science and Technology "which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems"; and third files in the Office of Security "which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources."

Files within these three components which do not meet the statutory definitions will not be eligible for exemption from search and review. Furthermore, records in all other parts of the CIA, including information which orginated in the operational components, will continue to be subject to search and review. For example, all documents which go to the Director of Central Intelligence, even if they concern the most intimate details of an operation, will be subject to search and review. Furthermore, all intelligence collected through human and technical means will continue to be covered by the FOIA because the operational components forward such information to the analytic components of the Agency. What will be exempt from search and review is information about how intelligence is collected—for example, how a source was spotted and recruited, how much he is paid, and the details of his meetings with his case officer. Such information is invariably exempt from disclosure under the FOIA and will continue to be exempt under any conceivable standard for classification.

In some instances, collected intelligence is so sensitive that it is disseminated to analysts and policymakers on an eyes only basis and then returned to the operational component for storage. To cover these situations and to guard against the possibility of an expansion of this practice to circumvent the intent of this legislation, the bill also includes a proviso that files maintained within operational components as the sole repository of disseminated intelligence cannot be exempt from search and review.

The new exemption would not apply—I repeat, would not apply—To: First, requests by American citizens for any information pertaining to themselves; Second, requests for information concerning a covert action the existence of which is not classified; or Third, requests for information concerning the specific subject matter of an investigation by the two Intelligence Committees, the Department of Justice, the CIA, or the Intelligence Oversight Board into improper or illegal intelligence activities.

These three exceptions are crucial in ensuring that the new statute does not dilute the force of the principles upon which the Freedom of Information Act is based. They preserve a citizen's access to whatever files the CIA may keep on him, preserve access to information of importance to informed public debate, and preserve access to information which may illuminate or reveal past or present intelligence abuses.

Actions taken by the CIA pursuant to this legislation will be subject to the de novo judicial review provisions cur-

rently applicable to all FOIA requests. However, procedural safeguards have been added to H.R. 5164 which insure that the judicial review process does not permit the courts to reimpose the search and review burdens on the Agency which the bill is intended to eliminate.

Other provisions of H.R. 5164: First, require the Director of Central Intelligence to review, at least once every 10 years, the exemptions of operational files in force to determine whether the exemptions may be lifted from any files or portions of files; second, require the Director of Central Intelligence to report by June 1, 1985, to the Intelligence Committees on the feasibility of conducting a program of systematic review for declassification and release of classified CIA information of historical value; and third, apply the measure retroactively to all pending FOIA requests, and to all civil actions to enforce FOIA access to CIA records which were not filed prior to February 7, 1984.

H.R. 5164 contains an important section which was added by the Committee on Government Operations and which I fully support. The provision, which the gentleman from Oklahoma will explain in more detail, amends the Privacy Act to make clear that the Privacy Act is not a withholding statute for purposes of FOIA exemption (b)(3).

I urge my colleagues to support the changes in the FOIA contained in H.R. 5164. They are reasonable changes designed to eliminate waste, improve the efficiency of FOIA processing, and provide increased protection to intelligence sources and methods.

In testimony before the Senate Intelligence Committee, Deputy Director McMahon pledged that no further relief from the FOIA for the intelligence community beyond what is contained in this measure will be sought by the administration.

H.R. 5164 does not represent a chipping away of the FOIA as it applies to CIA. It is not the camel's nose under the tent. Rather, by ensuring more timely responses to requests and preserving access to currently releasable information, H.R. 5164 recognizes the continuing vitality and importance of FOIA as it relates to the Central Intelligence Agency.●

● Mr. ERLENBORN. Mr. Speaker, H.R. 5164 is the product of deliberations over several Congresses on how to balance the needs of the CIA to keep certain information secret and the needs of the public in our free society to be appropriately informed on the activities of the CIA.

Two Congresses ago, while I was serving on the Government Operations Subcommittee on Government Information, we considered legislation similar in concept to that which is before the House today. At that time there was no consensus on the issues of the nature and extent of the burden imposed on the CIA by being subject to the Freedom of Information Act. Nevertheless, those hearings raised the issues—particularly judicial review—which would have to be resolved before this legislation could be enacted.

In my judgment, those issues have now been resolved. This legislation has been carefully crafted. It includes provisions which will provide the Congress with the oversight mechanisms needed to monitor the balance we have reached.

I would also like to express my particular appreciation for the amendment added by our Committee on Government Operations to clarify the relationship between the Freedom of Information Act and the Privacy Act. As one of the authors of the Privacy Act and the 1974 amendments to the Freedom of Information Act. I have been troubled to see that a couple of circuit courts of appeals have rendered decisions which are contrary to the goals of those two acts.

Even more troubling was the decision of the Justice Department and the Office of Management and Budget last March to reverse the policy guidance and regulations which have been in effect since the Privacy Act took effect in 1975. This reversal of policy has the effect of restricting an individual's access to Government files containing records about him or herself in a way not contemplated by the Congress in 1974.

The amendment contained in section 2(c) of the bill restores the relationship between the two laws which Congress intended in 1974, and which the executive branch has honored for all but 6 months of the time since.

All parties that have been involved in bringing this legislation to this point are to be congratulated for their efforts. It is a good bill and is deserving of our support. I hope that we will pass the bill and that the other body will quickly ratify our work and send this legislation to the President for his signature.●

● Mr. GOODLING. Mr. Speaker, I rise in support of H.R. 5164, the Central Intelligence Agency Information Act. We in the Intelligence Committee like to adhere to the principle of open government as much as we possible can, but much of our work takes place out of public view because we have not found a magic way to keep the American people informed about U.S. intelligence activities without letting hostile foreign nations know the same things. Even some of the public work of our committee, such as the annual Intelligence authorization bill, has secret aspects to it. That authorization bill is public, but it doesn't contain the actual budgeted amounts which other authorization bills contain.

It is thus a great pleasure to the members of our committee to be able to deal, as we have in considering H.R. 5164, with an issue of great importance in the same public and deliberative fashion as most other legislation in the Congress is considered.

The Intelligence Committee and the Committee on Government Operations have fully vetted this legislation. The concerns of all have been considered carefully and, indeed, have been favorably addressed by the legislation. I note that it is somewhat of a monument to the legislative process that we have produced a bill on the question of public access to governmental information that is fully supported by both the Central Intelligence Agency and the American Civil Liberties Union.

The bill ensures that the pubic will continue to have access to meaningful CIA information under the FOIA to the full extent that they do today. While preserving such access, the bill rationalizes the FOIA administrative process at CIA so that the CIA is not required to spend time and taxpayers' money reviewing and justifying the withholding of its most sensitive operational records that everybody agrees are properly classified and must remain secret. The taxpayers' resources allocated to CIA-FOIA activities will instead be employed productively in reviewing CIA records which may contain information which can be released to the public. This is a good government bill—it should save some money for the taxpayers, speed up service to the members of the public who make FOIA requests, and improve operational security in U.S. intelligence activities, all while preserving undiminished the amount of meaningful CIA information available to the public under the FOIA.

Mr. Speaker, I will vote for H.R. 5164 and I ask my colleagues to join me.●

Mr. WHITEHURST. I have no further requests for time, Mr. Speaker, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. BOLAND], that the House suspend the rules and pass the bill, H.R. 5164, as amended by the Committee on Government Operations.

The question was taken.

Mr. WEISS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

GENERAL LEAVE

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5164.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PERMISSION TO CONSIDER DISTRICT OF COLUMBIA BUSINESS ON MONDAY, SEPTEMBER 24, 1984

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that District of Columbia business be in order on Monday, September 24, 1984.

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

There was no objection.

COMMON CARRIERS BY WATER IN FOREIGN COMMERCE

Mr. BIAGGI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1511) to provide for jurisdiction over common carriers by water engaging in foreign commerce to and from the United States utilizing ports in nations contiguous to the United States, as amended.

The Clerk read as follows:

H.R. 1511

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 of the Shipping Act of 1984 (46 App. U.S.C. 1707) is amended by adding the following new subsection:

"(g)(1) For purposes of this section and section 10(b)(1), (2), (3), (4), (8), and (10) of this Act, the term 'common carrier' includes a person that holds itself out to the general public to provide ocean transportation of cargo originating in or destined for a United States point by way of a port in a nation contiguous to the United States and that—

"(A) advertises, solicits, or arranges, directly or through an agent, within the United States, for that transportation; and

"(B) engages, directly or through an agent, in the transportation of that cargo between a point within the United States and a port in a nation contiguous to the United States.

"(2) This Act does not require any person described in paragraph (1) to reveal any information with respect to transportation of any cargo between a point of origin or final destination in the United States and a United States port or a port in a nation contiguous to the United States, except insofar as the costs of that transportation comprise an undifferentiated portion of the whole amount of any tariff required to be filed under this section.

"(3) This Act does not extend to the Federal Maritime Commission any jurisdiction or authority to regulate rail or motor carriers, when they are engaging in activities subject to the jurisdiction of the Interstate Commerce Commission."

SEC. 2. The Federal Maritime Commission shall submit a report to the Congress within eighteen months after the effective date of this Act. The report shall include—

(1) an assessment of whether this Act has caused increased transportation and related costs that have resulted in noncompetitive pricing by export shippers, taking into account the comparative value of United States and foreign currencies;

(2) an assessment of whether this Act has resulted in a diversion of cargo from one United States port to another United States port;

(3) an assessment of whether the additional regulatory burden imposed by this Act has resulted in conditions contrary to the intent of the Shipping Act of 1984 (46 App. U.S.C. 1701 et. seq.), including an increase in litigation involving tariff challenges; and

(4) an assessment of whether this Act has resulted in the creation of trade or transportation barriers by foreign nations.

SEC. 3. This Act shall become effective ninety days after the date of its enactment.

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. BIAGGI] will be recognized for 20 minutes and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. BIAGGI].

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

The motion to suspend includes minor clarifying amendments added to the bill after it was reported by the committee. These amendments were requested by the distinguished chairman of the Committee on Energy and Commerce. Their purpose is to make it clear that neither the bill, nor the Shipping Act, as amended by the bill, affects matters within the jurisdiction of that committee. Further, the amendments also make it clear that the Federal Maritime Commission does not, under the Shipping Act, as amended by this bill, have any jurisdiction or authority to regulate those activities of rail and motor carriers that are subject to the jurisdiction of the Interstate Commerce Commission. That jurisdiction remains with the Interstate Commerce Commission.

Before explaining the bill, let me express my appreciation to the gentleman from Michigan for his cooperation in working out these amendments.

I rise in support of H.R. 1511. This bill addresses the longstanding problem of Canadian cargo diversion. Since the mid-1970's, there has been a steady increase in the amount of cargo being diverted from U.S. east coast and gulf ports and transported instead through Montreal. The result has been a loss of business for American ports and a loss of jobs for American workers.

While H.R. 1511 may not stop this pattern of diversion, it will, at least, require certain ocean carriers operating out of Canadian ports to play by the same rules as carriers operating out of American ports. The affected carriers would have to file their tariffs with the Federal Maritime Commission. They would be required to make their rates available to all similarly situated shippers, and they would be prohibited from engaging in certain activities such as rebating.

To clarify what this bill would do, let me tell you what it will not do.

H.R. 1511 will not affect any cost advantages now enjoyed by a carrier diverting cargo through Canada;

It will not increase shipping charges for American shippers or force any ocean carrier to raise its rates; and

It will not restrict the movement of cargo or diminish a shipper's freedom of choice.

Simply put, H.R. 1511 would eliminate the dual standard that favors foreign-flag carriers operating out of Canadian ports over carriers operating out of our ports here at home.

The opponents of the bill say we are overstepping our bounds. They say we are attempting to exercise extraterritorial jurisdiction over the foreign commerce of Canada. I do not agree. The bill applies only to a specific group of carriers—those that engage in the ocean transportation of cargo originating in or destined for the United States, if that ocean carrier advertises or solicits the transportation within the United States and transports the cargo between the United States and a port in a contiguous nation for shipment abroad.

Under general principles of international law, a national government has jurisdiction over conduct within its boundaries. Consider the following facts:

The cargo that would be covered by this bill originates in or is destined for the United States;

It is shipped in containers that are loaded or unloaded in the United States;

In the case of export cargo, the invoices and bills of lading are issued in the United States;

The foreign carriers servicing Canadian ports maintain offices in the United States;

They advertise and solicit business in the United States;

They quote rates for the shipment of cargo from the Unites States to overseas points in the United States; and

They provide overland transportation service in the United States.

I do not think that requiring such carriers to file their tariffs can realistically be termed the exercise of extraterritorial jurisdiction over Canadian foreign commerce.

This legislation has been considered in several previous Congresses. Hearings have been held before three House and Senate committees. It is time we enact this bill. It would impose no undue burden on the affected foreign-flag carriers. Rather, it would assure that those carriers that choose to patronize American ports are not penalized for doing so.