STATEMENT OF

ADMIRAL STANSFIELD TURNER

DIRECTOR OF CENTRAL INTELLIGENCE

BEFORE THE

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

HOUSE OF REPRESENTATIVES

ON

H.R. 6588

THE "NATIONAL INTELLIGENCE ACT OF 1980"

MARCH 18, 1980

MR. CHAIRMAN, I AM PLEASED TO BE HERE TODAY ON BEHALF OF THE PRESIDENT TO DISCUSS KEY ISSUES RELATED TO H.R. 6588, THE PROPOSED STATUTORY CHARTER FOR THE INTELLIGENCE COMMUNITY. THE PRESIDENT AND I STRONGLY SUPPORT THE CONCEPT OF INTELLIGENCE CHARTER LEGISLATION.

THE GUIDING LEGISLATION WHICH EXISTS TODAY, THE NATIONAL SECURITY ACT OF 1947 AS AMENDED, IS OUTMODED. THE EVOLUTION OF THE INTELLIGENCE COMMUNITY HAS NOT CONFORMED WITH THE IMAGE THAT THE DRAFTERS OF THAT LEGISLATION HAD IN MIND. WE CERTAINLY ARE NOT ENGAGED IN ANY ILLEGAL ACTIVITIES, BUT THE PICTURE THAT CURRENT LAW PORTRAYS OF WHAT THE INTELLIGENCE COMMUNITY IS AND HOW IT FUNCTIONS IS NOT FULLY IN ACCORD WITH CURRENT REALITIES. THE TIME HAS COME FOR CONGRESS TO ENUNCIATE TO US AND TO THE AMERICAN PEOPLE WHAT KIND OF AN INTELLIGENCE COMMUNITY IT WANTS.

BEYOND THIS MR. CHAIRMAN, WE NEED AN INTELLIGENCE CHARTER TO DELINEATE AUTHORITIES AND TO PROVIDE WORKABLE GUIDANCE TO INTELLIGENCE PROFESSIONALS. INTELLIGENCE IS BY ITS VERY NATURE A RISK-TAKING BUSINESS. INTELLIGENCE PROFESSIONALS ARE READY TO TAKE THOSE RISKS ON BEHALF OF THEIR COUNTRY. THEY DESERVE, I BELIEVE, AS EXPRESS A DESCRIPTION OF WHAT THEY ARE EXPECTED TO DO AND NOT TO DO AS IT IS HUMANLY POSSIBLE TO CREATE. THESE STANDARDS OF CONDUCT AND SPECIFIC PROHIBITIONS ARE ESPECIALLY IMPORTANT WHEN THERE IS A POTENTIAL FOR CONFLICT BETWEEN THE NATION'S NEED FOR INTELLIGENCE INFORMATION AND THE INDIVIDUAL RIGHTS OF ITS PEOPLE.

AN INTELLIGENCE CHARTER MUST ALSO TIE TOGETHER THE AUTHORITIES AND THE STANDARDS OF CONDUCT IT ESTABLISHES WITH A STRONG SYSTEM OF OVERSIGHT AND ACCOUNTABILITY BY WHICH THE EXECUTIVE BRANCH AND THE CONGRESS WILL STAND WATCH OVER THE INTELLIGENCE COMMUNITY'S USE OF THOSE AUTHORITIES AND ADHERENCE TO THOSE STANDARDS OF CONDUCT. I BELIEVE IN AND SUPPORT THIS CONCEPT OF AUTHORITIES, STANDARDS,

AND OVERSIGHT. IT FITS OUR DEMOCRATIC SYSTEM, AND PROPERLY BRINGS THE CONGRESS INTO OUR INTELLIGENCE PROCESS.

UNFORTUNATELY, THE ISSUE OF HOW CONGRESSIONAL OVERSIGHT WILL BE EXERCISED HAS SOMEHOW ACHIEVED A PROMINENCE IN RECENT DAYS ENTIRELY OUT OF PROPORTION TO THE TRUE SIGNIFICANCE OF THE DIFFERENCES BETWEEN THE PROVISIONS IN THE BILL BEFORE US AND WHAT THE ADMINISTRATION WOULD LIKE TO SEE. I AM DISTRESSED BY THIS TURN OF EVENTS FOR A NUMBER OF REASONS. FIRST, MY TESTIMONY BEFORE THE SENATE SELECT COMMITTEE ON FEBRUARY 21ST AND THE POSITION OF THE ADMINISTRATION BOTH HAVE BEEN SERIOUSLY MISREPRESENTED IN THE PRESS. SECOND, AS A RESULT OF CONSEQUENT MISUNDERSTANDINGS, THE ACCOMPLISHMENTS OF THREE YEARS OF EXCELLENT OVERSIGHT RELATIONSHIPS BETWEEN THE INTELLIGENCE COMMUNITY AND THE TWO SELECT COMMITTEES ARE BEING PUT AT RISK.

THIS IS WHY I AM SO SADDENED THAT THE PUBLIC HAS BEEN GIVEN THE FALSE IMPRESSION THAT THE INTELLIGENCE COMMUNITY

HAS WITHHELD INFORMATION IN THE OVERSIGHT PROCESS. I HAVE DEDICATED MYSELF OVER THE PAST THREE YEARS TO DEVELOPING WHAT I BELIEVE HAS BEEN A HIGHLY SATISFACTORY PROCESS OF EXCHANGING INFORMATION WITH YOUR COMMITTEE, AND WITH THE SENATE SELECT COMMITTEE ON INTELLIGENCE. I BELIEVE THAT WE HAVE FULLY SATISFIED EVERY REQUEST FOR INFORMATION LEVIED ON US BY THE TWO INTELLIGENCE COMMITTEES, AND THAT THE PUBLIC HAS EVERY REASON TO REPOSE CONFIDENCE IN THE OVERSIGHT PROCESS AS CARRIED OUT BY YOUR COMMITTEE AND ITS COUNTERPART IN THE SENATE. IT IS ABSOLUTELY UNTRUE, AS HAS BEEN SUGGESTED IN THE PRESS, THAT I HAVE PROVIDED TO EITHER OF THE SELECT COMMITTEES LESS INFORMATION ABOUT THE ACTIVITIES OF THE CIA OR THE INTELLIGENCE COMMUNITY THAN THOSE COMMITTEES THOUGHT THEY WERE GETTING. AS THE MEMBERS OF THIS COMMITTEE WELL KNOW, YOUR INQUIRIES HAVE BEEN SEARCHING, AND YOUR ACCESS TO INFORMATION HAS BEEN EXTENSIVE. IN RARE CASES WHEN INFORMATION REQUESTED BY THE COMMITTEES HAS HAD TO BE LIMITED OR HAS REQUIRED SPECIAL COMPARTMENTED HANDLING BECAUSE OF OPERATIONAL OR SECURITY REASONS, THE COMMITTEE HAS BEEN EXPLICITY ADVISED.

THUS, I AM CONVINCED THAT THE CURRENT OVERSIGHT ARRANGEMENTS ARE WORKING WELL, AND I HAVE NO REASON TO BELIEVE THAT THIS VIEW IS NOT SHARED BY THE MEMBERS OF THIS COMMITTEE AND ITS COUNTERPART IN THE SENATE. THE ADMINISTRATION DOES NOT WANT TO CHANGE OR TO DIMINISH PRESENT OVERSIGHT RELATIONSHIPS. THE ADMINISTRATION IS MERELY SEEKING TO MAINTAIN THE MUTUALLY ACCEPTABLE PRACTICES AND PROCEDURES REGARDING NOTIFICATION OF COVERT ACTIONS AND COMMITTEE ACCESS TO INFORMATION WHICH ARE PRESENTLY IN FORCE.

CONFUSION AND DISAGREEMENT HAVE ARISEN OVER THE MANNER IN WHICH THE RELATIONSHIP WE ENJOY TODAY IS TO BE REFLECTED IN STATUTE. THIS HAS HAPPENED, I BELIEVE, BECAUSE THERE HAS BEEN A MISPLACED EMPHASIS ON INTERPRETATION OF EXISTING LEGAL REQUIREMENTS AT THE EXPENSE OF CONSENSUS ON THE ADEQUACY OF CURRENT PRACTICES. THE DRAFTERS OF THE OVERSIGHT PROVISIONS IN THE BILL BEFORE US APPEAR TO HONESTLY BELIEVE THAT THESE PROVISIONS MERELY CODIFY EXISTING REQUIREMENTS. IN THE VIEW OF THE INTELLIGENCE COMMUNITY

AND THE ADMINISTRATION, HOWEVER, THESE PROVISIONS DEPART FROM EXISTING REQUIREMENTS IN A MANNER THAT IS UNNECESSARY, IMPROPER, AND UNWISE.

THE MAIN POINT OF CONFUSION HAS BEEN THE ISSUE OF INFORMING THE LEGISLATIVE BRANCH OF PRESIDENTIAL FINDINGS WHICH AUTHORIZE COVERT ACTIONS. ADMINISTRATION PRACTICE HAS BEEN TO REPORT PRESIDENTIAL FINDINGS IN ADVANCE OF IMPLEMENTATION OF THE ACTION. IN THE PAST 3 YEARS THERE HAS BEEN ONLY ONE INSTANCE, ALREADY WELL KNOWN TO YOU, IN WHICH THE REPORT WAS SUBSEQUENT TO IMPLEMENTATION. I WISH TO STATE CATEGORICALLY THAT THIS INSTANCE IS THE ONLY SUCH OCCURRENCE TO DATE. IT WAS A CASE IN WHICH THE PRESIDENT DIRECTED THAT NOTIFICATION BE WITHHELD UNTIL ANY RISK TO THE OPERATION HAD PASSED. WE SUBSEQUENTLY MADE NOTIFICATION OF THE FINDING WITHIN HOURS OF THE RISKS BEING BEHIND US. RECENT PRESS REPORTING GIVING THE IMPRESSION THAT WE HAVE BEEN WITHHOLDING INFORMATION ON SPECIAL ACTIVIITES FROM YOU IS PATENTLY FALSE AND

MISLEADING. THE ONLY ISSUE IS WHEN WE NOTIFY YOU, NOT WHETHER WE DO.

IT IS CLEAR THAT SECTIONS 125 AND 142 OF THE BILL BEFORE US WOULD REQUIRE NOTICE TO THE SELECT COMMITTEES OF PRESIDENTIALLY AUTHORIZED SPECIAL ACTIVITIES (OR COVERT ACTIONS) AS A CONDITION PRECEDENT TO THEIR INITIATION. WE SEE THIS AS A CLEAR DEPARTURE FROM EXISTING REQUIREMENTS. SECTION 142 (A)(1) OF H.R. 6588 STIPULATES THAT THE REQUIREMENT TO KEEP THE INTELLIGENCE COMMITTEES FULLY AND CURRENTLY INFORMED OF SIGNIFICANT ANTICIPATED ACTIVITIES "SHALL NOT REQUIRE APPROVAL OF SUCH COMMITTEES AS A CONDITION PRECEDENT TO THE INITIATION OF ANY SUCH ANTICIPATED INTELLIGENCE ACTIVITY." IN OTHER WORDS, WHILE THE COMMITTEES NEED NOT APPROVE THE ACTIVITY, THEY MUST BE NOTIFIED BEFORE IT CAN BEGIN. SECTION 125, IN REFERRING TO SECTION 142, USES THE PHRASE "SUCH PRIOR NOTICE." THIS IS A DEPARTURE FROM THE LANGUAGE OF EXECUTIVE ORDER 12036, WHICH STATES THAT THE REQUIREMENT

TO KEEP THE SELECT COMMITTEES FULLY AND CURRENTLY INFORMED CONCERNING INTELLIGENCE ACTIVIITES DOES NOT CONSTITUTE A CONDITION PRECEDENT TO THE IMPLEMENTATION OF SUCH ACTIVITIES. SECTION 3-401 OF THE EXECUTIVE ORDER, IN WHICH THIS REQUIREMENT APPEARS, IS, MOREOVER, CONDITIONED UPON SECTION 3-4, WHICH MAKES REFERENCE TO THE PRESIDENT'S CONSTITUTIONAL RESPONSIBILITIES AND TO MY RESPONSIBILITY FOR THE PROTECTION OF INTELLIGENCE SOURCES AND METHODS. THIS SOURCES AND METHODS PROVISION DOES NOT APPEAR IN SECTION 125 OR SECTION 142 OF THE BILL. THE SO CALLED "PRIOR NOTICE" REQUIREMENT, IS, WE BELIEVE, ALSO A DISTINCT DEPARTURE FROM THE "TIMELY" REPORTING CALLED FOR UNDER THE HUGHES-RYAN AMENDMENT.

THE ADMINISTRATION FAVORS ALTERNATIVE PROVISIONS WHICH WOULD CONFIRM CURRENT OVERSIGHT ARRANGEMENTS BY REQUIRING THAT THE INTELLIGENCE COMMITTEES BE KEPT FULLY AND CURRENTLY INFORMED OF THE ACTIVITIES OF THE INTELLIGENCE COMMUNITY. SUCH PROVISIONS WOULD CONTINUE THE CURRENT REPORTING STANDARD UNDER THE HUGHES-RYAN AMENDMENT BY REQUIRING THAT SPECIAL ACTIVITIES BE REPORTED "IN A TIMELY FASHION," BUT WOULD LIMIT SUCH REPORTING TO THE SENATE AND HOUSE SELECT COMMITTEES

ON INTELLIGENCE. THE ADMINISTRATION WOULD HAVE NO OBJECTION TO MAKING CLEAR IN LEGISLATIVE HISTORY THAT IN PRACTICE NOTIFICATION WOULD ALMOST ALWAYS BE GIVEN BEFORE IMPLEMENTATION.

A STATUTORY REQUIREMENT FOR PRIOR NOTICE WOULD, HOWEVER, BE UNWISE, BECAUSE IT WOULD HAMPER THE PRESIDENT'S ABILITY TO DEAL WITH SITUATIONS INVOLVING GRAVE DANGER TO PERSONAL SAFETY OR WHICH NECESSITATED THE UTMOST SPEED AND SECRECY. IT WOULD ALSO HAVE A CHILLING EFFECT UPON THE WILLINGNESS OF INDIVIDUALS AND ORGANIZATIONS TO COOPERATE WITH THE UNITED STATES IN THESE ENDEAVORS.

A STATUTORY REQUIREMENT FOR PRIOR NOTICE WOULD BE IMPROPER AS WELL. IT WOULD AMOUNT TO EXCESSIVE INTRUSION BY THE CONGRESS INTO THE PRESIDENT'S EXERCISE OF HIS POWERS UNDER THE CONSTITUTION. THE TIMING OF NOTIFICATION IS NOT CRUCIAL FOR PURPOSES OF OVERSIGHT AS LONG AS THE COMMITTEE IS ASSURED OF RECEIVING SUFFICIENT INFORMATION TO ALLOW A JUDGEMENT AS TO LEGALITY AND PROPRIETY. PRIOR NOTICE IS NECESSARY, ON THE OTHER HAND, IF IT IS INTENDED TO ENSURE INVOLVEMENT IN THE DECISION MAKING PROCESS,

AND THIS CLEARLY RAISES QUESTIONS CONCERNING THE SEPARATION OF POWERS BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES. LET ME ALSO NOTE THAT AS SECTION 142 IS NOW DRAFTED, THE PROVISO THAT PRIOR COMMITTEE APPROVAL IS NOT A CONDITION PRECEDENT TO IMPLEMENTATION WOULD BE MEANINGLESS, BECAUSE EVERY INDIVIDUAL WITH ACCESS TO THE PRIOR NOTIFICATION WOULD HAVE THE POWER TO VETO THE ACTIVITY THROUGH A THREAT TO DISCLOSE IT.

MR. CHAIRMAN, AS PRESENTLY DRAFTED, SECTION 142 OF THE BILL WOULD ALSO REQUIRE PRIOR NOTIFICATION OF SIGNIFICANT CLANDESTINE COLLECTION ACTIVITIES. THIS IS POTENTIALLY EVEN MORE TROUBLESOME THAN PRIOR NOTIFICATION OF SPECIAL ACTIVITIES. FOREIGN INTELLIGENCE COLLECTION IS A VITAL ASPECT OF THE PRESIDENT'S EXERCISE OF HIS RESPONSIBLITY FOR THE CONDUCT OF FOREIGN AFFAIRS AND THE PROTECTION OF THE NATIONAL SECURITY. A PRIOR NOTICE REQUIREMENT WOULD BE A SERIOUS INTRUSION INTO EXECUTIVE RESPONSIBILITIES IN THESE AREAS. THE NEED FOR SPEED AND SECRECY IS OFTEN GREATER FOR CLANDESTINE COLLECTION ACTIVITIES THAN FOR SPECIAL ACTIVITIES, AND IT WOULD NOT APPEAR THAT PRIOR NOTICE OF SPECIFIC COLLECTION OPERATIONS

IS NECESSARY FOR EFFECTIVE OVERSIGHT, GIVEN THE INTELLIGENCE COMMITTEES' ACTIVITIES IN THE BUDGET AUTHORIZATION PROCESS AND THE OTHER EXTENSIVE OVERSIGHT AUTHORITIES ALREADY BEING EXERCISED BY THE COMMITTEES.

HERE AGAIN, THE ADMINISTRATION BELIEVES THAT IT IS ADVISABLE TO CODIFY CURRENT PRACTICE. THE "FULLY AND CURRENTLY INFORMED" REQUIREMENT OF THE ADMINISTRATION'S PROPOSED SECTION 142 AND THE CONTINUED EXERCISE OF BUDGET AUTHORIZATION AUTHORITY WOULD ENSURE THAT APPROPRIATE INFORMATION IS PROVIDED CONCERNING CLANDESTINE COLLECTION PROGRAMS, OFTEN WELL IN ADVANCE OF PROGRAM IMPLEMENTATION.

IN ADDITION TO THE QUESTION OF PRIOR NOTIFICATION OF COVERT ACTIONS AND OTHER INTELLIGENCE ACTIVITIES, THE ADMINISTRATION HAS OTHER CONCERNS WITH H.R. 6588 THAT CENTER ON SECTION 142. SUBSECTION 142(A)(2) WOULD REQUIRE THE INTELLIGENCE AGENCIES TO FURNISH ANY INFORMATION OR MATERIAL WHATSOEVER WHEN REQUESTED BY THE TWO OVERSIGHT COMMITTEES. WHILE THERE IS A SIMILAR PROVISION IN EXECUTIVE ORDER 12036, IT IS CONDITIONED ON MY RESPONSIBILITY TO PROTECT INTELLIGENCE SOURCES AND METHODS, AS WELL AS ON THE CONSTITUTIONAL AUTHORITIES AND DUTIES OF THE PRESIDENT.

AS YOU WELL KNOW, IN SEVERAL YEARS OF EVOLVING OVERSIGHT RELATIONSHIPS, THIS EXECUTIVE ORDER LANGUAGE HAS NOT PROVED TO POSE ANY IMPEDIMENT TO YOUR COMMITTEE'S ACCESS TO INFORMATION WHICH IT REQUIRED. AS FAR AS I AM AWARE, WE HAVE NEVER HAD A UNRESOLVABLE PROBLEM OVER THE QUESTION OF ACCESS TO INFORMATION. THE COMMITTEE HAS GENERALLY REFRAINED FROM REQUESTING INFORMATION THAT WOULD IDENTIFY SPECIFIC SOURCES, AGENTS, OR RELATIONSHIPS. ON THE OTHER HAND, WE HAVE BEEN FORTHCOMING WITH SENSITIVE INFORMATION WHEN THE COMMITTEE HAS HAD A CLEAR NEED FOR IT.

THE DESIRE FOR A STATUTORY RIGHT TO TOTAL ACCESS, WHILE PERHAPS UNDERSTANDABLE AS A SYMBOL OF OVERSIGHT, MUST BE BALANCED AGAINST THE DAMAGE IT WOULD DO TO OUR INTELLIGENCE CAPABILITIES. WE MUST RECOGNIZE THAT A RIGID STATUTORY REQUIREMENT OF FULL CONGRESSIONAL ACCESS TO INTELLIGENCE INFORMATION WOULD HAVE AN INHIBITING EFFECT UPON THE WILLINGNESS OF INDIVIDUALS AND ORGANIZATIONS TO COOPERATE WITH OUR COUNTRY.

OUR CONCERN IS THAT SECTION 142 OF THE BILL FAILS TO SPECIFICALLY MENTION THE DUTY OF THE DNI TO PROTECT INTELLIGENCE SOURCES AND

METHODS. OUR ABILITY TO RECRUIT FOREIGN SOURCES AND TO DEAL WITH FRIENDLY FOREIGN INTELLIGENCE SERVICES WOULD BE SIGNIFICANTLY IMPAIRED BY THE SIGNAL THAT THE OMISSION OF THIS LONGSTANDING PROVISION WOULD GIVE. THIS LANGUAGE HAS BEEN CENTRAL TO OUR ASSURANCES TO SUCH INDIVIDUALS AND ORGANIZATIONS THAT WE CAN AND WILL PROVDE PROTECTION FOR THEIR LEGITIMATE INTERESTS. THE SECTION 142 LANGUAGE FAVORED BY THE ADMINISTRATION IS SET FORTH IN THE APPENDIX TO MY STATEMENT.

MR. CHAIRMAN, THE INFORMATION WE ARE TALKING ABOUT HERE IS OF THE KIND WHICH THIS COMMITTEE HAS SAGACIOUSLY AND CONSISTENTLY INDICATED IT WOULD NEVER SEEK TO OBTAIN. THE NAMES OF HUMAN SOURCES IS ONE GOOD EXAMPLE. THE INCLUSION OF A PROVISON THAT WOULD THEORETICALLY REQUIRE US TO PROVIDE SUCH A NAME COULD HAVE A VERY CHILLING EFFECT UPON THE CONFIDENCE WHICH WE CAN INSTILL IN SUCH INDIVIDUALS THAT WORKING WITH US IS A REASONABLY SAFE PROPOSITION. WE ARE ASKING YOU FOR RELIEF FROM THE HUGHES-RYAN AMENDMENT, FROM THE MORE ONEROUS PROVISONS OF THE FREEDOM OF INFORMATION ACT, AND FOR LEGISLATION TO DEAL WITH INSTANCES OF THE REVELATION OF THE IDENTITIES OF OUR

PERSONNEL. ALL OF THESE MEASURES WILL BE OF GREAT ASSISTANCE TO US IN DEVELOPING CONFIDENCE IN FOREIGN INDIVIDUALS AND INTELLIGENCE SERVICES. THE INCLUSION OF A PROVISION FOR ALL-ENCOMPASSING ACCESS TO OUR DATA WOULD RUN DIRECTLY CONTRARY TO THESE STEPS AND WOULD IN LARGE MEASURE NULLIFY THEM.

THE OMISSION OF REFERENCE TO THE PROTECTION OF SOURCES AND METHODS IN SECTION 142 MUST, MOREOVER, BE READ IN CONJUNCTION WITH THE PROVISIONS ON CONGRESSIONAL RELEASE OF INFORMATION IN SECTION 143, WHICH PROVIDE FOR PUBLIC DISCLOSURE IN ACCORDANCE WITH SENATE RESOLUTION 400 AND HOUSE RESOLUTION 658. THESE RESOLUTIONS PROVIDE FOR PUBLIC DISCLOSURE DESPITE PRESIDENTIAL OBJECTION. MR. CHAIRMAN, AN INTELLIGENCE SERVICE WHICH CANNOT ASSURE ITS SOURCES OF INFORMATION AND ASSISTANCE THAT THEIR COOPERATION WITH THE UNITED STATES IS SAFE FROM PUBLIC DISCLOSURE WILL NOT BE ABLE TO PRODUCE THE KIND OF INTELLIGENCE WHICH OUR COUNTRY MUST HAVE IN THE DANGEROUS DECADES AHEAD.

THE KIND OF INFORMATION AT ISSUE HERE WOULD RARELY BE NECESSARY FOR OVERSIGHT PURPOSES, AND REFERENCE TO SOURCES

AND METHODS IS NOT LIKELY TO BE DETERMINATIVE IN ANY FUTURE CONFRONTATION BETWEEN THE CONGRESS AND THE EXECUTIVE BRANCH OVER PROVISION OF INFORMATION. BUT THE DAMAGE THAT WOULD BE DONE BY OMITTING THE LANGUAGE WOULD BE REAL AND IMMEDIATE. I URGE YOU TO BALANCE THESE COMPETING INTERESTS AND TO MAKE YOUR DECISION ON THIS ISSUE ACCORDINGLY. MR. CHAIRMAN, ONCE AGAIN I BELIEVE THAT THE ADMINISTRATION'S LANGUAGE BEST SERVES TO ACCOMPLISH OUR COMMON INTEREST IN MAINTAINING THE MUTUALLY SATISFACTORY STATUS QUO.

MR. CHAIRMAN, BEFORE I LEAVE THIS SUBJECT I WOULD SUGGEST TO YOU THAT ANY EFFORT TO ATTAIN EXCESSIVE PRECISION OF STATUTORY LANGUAGE IN AN AREA THAT ULTIMATELY RESTS ON BASIC CONSTITUTIONAL AND POLITICAL PRINCIPLES IS BOUND TO BE DEVISIVE AND FRUITLESS. THE EFFECTIVENESS OF CONGRESSIONAL OVERSIGHT, IN MY VIEW, DEPENDS PRINCIPALLY ON THE DEGREE OF VIGOR, INTEREST AND PROFESSIONALISM WHICH THE CONGRESS BRINGS TO THE JOB, RATHER THAN ON STATUTORY REQUIREMENTS FOR COOPERATION

BY THE EXECUTIVE BRANCH. AS LONG AS THIS COMMITTEE AND ITS COUNTERPART IN THE SENATE CONTINUE TO BE VIGROUS, TO HAVE MEMBERS WHO TAKE AN ACTIVE AND INFORMED INTEREST IN THE SUBJECTS UNDER THEIR JURISDICTION AND TO HAVE A DEDICATED AND PROFESSIONAL STAFF, THERE WILL BE FULL AND EFFECTIVE OVERSIGHT. PERSONALLY, I AM NOT PERSUADED THAT PUBLIC CONFIDENCE IN THE OVERSIGHT PROCESS DEPENDS ON ANY PARTICULAR FORM OF WORDS IN THIS CHARTER; IT DEPENDS RATHER ON THE PUBLIC'S PERCEPTION THAT THE CONGRESS IS IN FACT DOING A JOB WHICH IT HAS AMPLE POWERS TO DO WITHOUT ANY STATUTORY LANGUAGE AT ALL. I WOULD REMIND YOU IN THIS REGARD THAT THE POWER OF THE PURSE IS THE MOST POTENT SOURCE OF AUTHORITY. THE GREATEST ADVANCE IN CONGRESSIONAL OVERSIGHT HAS BEEN THE BUDGETARY PROCESS, UNDER WHICH THE INTELLIGENCE COMMUNITY BUDGETS ARE EXAMINED BY THIS COMMITTEE AND OTHERS IN MICROSCOPIC DETAIL. THAT EXAMINATION, WITHOUT ANYTHING MORE, IS A STRONG PROTECTION AGAINST MISMANAGEMENT OR ABUSE.

WITH THIS IN MIND, LET ME REFER BRIEFLY TO THE OTHER SPECIFIC SUBSTANTIVE ISSUES WHICH HAVE PREVENTED THE FULL ENDORSEMENT OF H.R. 6588 BY THE INTELLIGENCE COMMUNITY AND THE ADMINISTRATION.

FIRST, I AM TROUBLED BY THE ORGANIZATION OF THE BILL. I BELIEVE THAT IT IS IMPORTANT THAT INTELLIGENCE CHARTER LEGISLATION FOLLOW THE LOGICAL SEQUENCE OF DEALING SUCCESSIVELY WITH AUTHORITIES, STANDARDS OF CONDUCT, AND THE SYSTEM OF OVERSIGHT AND ACCOUNTABILITY. I THINK THAT THE ORGANIZATIONAL STRUCTURE OF H.R. 6588 TENDS TO OBSCURE THE OVERSIGHT PROCESS SOMEWHAT BUT THAT THESE STRUCTURAL PROBLEMS CAN BE EASILY REMEDIED.

SECOND, A COMPREHENSIVE CHARTER SHOULD CONTAIN AUTHORITY FOR THE PRESIDENT TO WAIVE ANY PROVISION OF THAT ACT IN TIME OF WAR OR DURING A PERIOD COVERED BY A REPORT TO THE CONGRESS UNDER THE WAR POWERS RESOLUTION, TO THE EXTENT NECESSARY TO CARRY OUT THE ACTIVITIES COVERED BY THE REPORT. H.R. 6588 STILL CONTAINS A VARIETY OF RESTRICTIONS AND REQUIREMENTS, BOTH PROCEDURAL AND SUBSTANTIVE, WHICH IN TIME OF WAR COULD IMPEDE NECESSARY ACTION. THE ADMINISTRATION FAVORS A WARTIME WAIVER WHICH WOULD

ALLOW NECESSARY ACTIONS TO BE UNDERTAKEN QUICKLY IN EXIGENT CIRCUMSTANCES, WHILE AT THE SAME TIME PREVENTING ANY POTENTIAL FOR ABUSE BY REQUIRING NOTIFICATION TO THE SENATE AND HOUSE SELECT COMMITTEES ON INTELLIGENCE WHEN THE PROVISION IS INVOKED.

THIRD, SECTION 132 OF THE BILL, CONCERNING INTELLIGENCE RELATIONSHIPS WITH INDIVIDUALS WHO ARE MEMBERS OF MEDIA, RELIGIOUS, OR ACADEMIC ORGANIZATIONS OR EXCHANGE PROGRAMS, STANDS OUT AS ANOTHER EXAMPLE OF UNWARRANTED LIMITATION OF FLEXIBILITY. I SHARE THE VIEW OF CONGRESS THAT THESE INSTITUTIONS PLAY AN IMPORTANT ROLE IN OUR DEMOCRACY AND MUST HAVE THEIR INDEPENDENCE PRESERVED, BUT THERE CAN ARISE UNIQUE CIRCUMSTANCES IN WHICH INTELLIGENCE RELATIONSHIPS WITH MEMBERS OF THESE INSTITUTIONS ARE NOT ONLY WARRANTED, BUT MAY BE THE ONLY MEANS AVAILABLE FOR ACCOMPLISHING IMPORTANT INTELLIGENCE OBJECTIVES. THUS, IN ORDER TO MAINTAIN ESSENTIAL FLEXIBILITY THERE SHOULD BE NO BLANKET PROHIBITION IN STATUTE. IN THIS REGARD, IT MAKES LITTLE SENSE TO DISTINGUISH BETWEEN ACTUAL INTELLIGENCE RELATIONSHIPS WITH MEMBERS OF SUCH GROUPS AND THE ESTABLISHMENT AND USE OF COVER. WHILE

COVER USE SHOULD BE KEPT TO AN ABSOLUTE MINIMUM, CIRCUMSTANCES ARE CONCEIVABLE IN WHICH SUCH USE WOULD BE THE ONLY MEANS AVAILABLE TO THE GOVERNMENT IN A SITUATION OF THE HIGHEST URGENCY AND NATIONAL IMPORTANCE. THE WAY TO DEAL WITH SUCH SITUATIONS IS THROUGH INTERNAL GUIDELINES. THUS, THE ADMINISTRATION CANNOT SUPPORT SECTION 132 AS WRITTEN. COVER AND INTELLIGENCE RELATIONSHIPS INVOLVING THESE INSTITUTIONS SHOULD INSTEAD BE REGULATED BY EXECUTIVE BRANCH GUIDELINES. THESE GUIDELINES WOULD BE AVAILABLE TO THE SELECT COMMITTEES, AS IS NOW THE CASE.

FOURTH, A MAJOR SHORTCOMING OF H.R. 6588 IS ITS FAILURE TO ADEQUATELY CONFIRM OUR ABILITY TO PROTECT INTELLIGENCE SOURCES AND METHODS, AND TO ENSURE THE NECESSARY SECRECY FOR INTELLIGENCE ACTIVITIES. THERE ARE TWO MAJOR AREAS OF CONCERN HERE. ONE IS THE FREEDOM OF INFORMATION ACT AND THE OTHER IS THE UNAUTHORIZED DISCLOSURE OF IDENTITIES OF INTELLIGENCE PERSONNEL.

WE MUST RECOGNIZE THAT IT IS INAPPROPRIATE TO APPLY GOVERNMENT-WIDE FREEDOM OF INFORMATION AND PUBLIC DISCLOSURE CONCEPTS TO INTELLIGENCE INFORMATION THAT MUST REMAIN SECRET. THE BILL DOES EXEMPT CERTAIN CIA OPERATIONAL AND TECHNICAL FILES FROM THE

SEARCH, REVIEW, AND DISCLOSURE REQUIREMENT OF THE FREEDOM OF INFORMATION ACT, EXCEPT FOR REQUESTS BY U.S. PERSONS FOR INFORMATION ON THEMSELVES. IT FAILS, HOWEVER, TO PROVIDE ANY RELIEF FOR OTHER INTELLIGENCE COMMUNITY COMPONENTS, WHICH FACE THE SAME PROBLEMS AS THE CIA IN THIS REGARD. THE ADMINISTRATION FAVORS BROADER RELIEF THAN THAT WHICH APPEARS IN THE BILL BEFORE US. THE PROPOSAL WHICH I SUGGESTED ON BEHALF OF THE ADMINISTRATION DURING MY TESTIMONY BEFORE THE SENATE SELECT COMMITTEE LAST MONTH IS ONE SUCH FORMULATION. WE HAVE BEEN CONSIDERING OTHER FORMULATIONS AS WELL, AND WE ARE CURRENTLY DISCUSSING VARIOUS ALTERNATIVES WITH THE ATTORNEY GENERAL, WHO HAS BEEN REVIEWING INTELLIGENCE COMMUNITY PROBLEMS UNDER THE FREEDOM OF INFORMATION ACT SINCE LAST YEAR. I WOULD ANTICIPATE THAT THE ATTORNEY GENERAL WILL PROPOSE SPECIFIC LANGUAGE WHEN HE TESTIFIES BEFORE THIS COMMITTEE.

AN AREA OF EVEN MORE SERIOUS CONCERN IS THE FAILURE OF H.R. 6588 TO EFFECTIVELY PROSCRIBE UNAUTHORIZED DISCLOSURES OF THE IDENTITIES OF INTELLIGENCE OFFICERS, AGENTS AND

SOURCES. SECTION 701 OF THE BILL WOULD MAKE THIS PERVERSE ACTIVITY AN OFFENSE ONLY FOR PERSONS WHO HAVE HAD AUTHORIZED ACCESS TO CLASSIFIED INFORMATION THAT IDENTIFIES INTELLIGENCE PERSONNEL, AND WOULD SPECIFICALLY BAR PROSECUTION OF ACCOMPLICES AND CONSPIRATORS WHOSE ACCESS TO SUCH INFORMATION IS UNAUTHORIZED. THIS APPROACH FAILS TO PROVIDE ADEQUATE PROTECTION FOR THE MEN AND WOMEN WHO SERVE OUR NATION IN DIFFICULT AND DANGEROUS ASSIGNMENTS AND IT IS, IN MY PERSONAL VIEW, ONE OF THE MOST SERIOUS SHORTCOMINGS OF THE BILL. TO ENSURE THAT THE INTELLIGENCE STRUCTURE WE ARE BUILDING TODAY REMAINS EFFECTIVE IN THE FUTURE, THE ADMINISTRATION FAVORS BROADER PROTECTION FOR INTELLIGENCE PERSONNEL. WE MUST WEIGH THE ABSENCE OF ANY LEGITIMATE PUBLIC PURPOSE IN THE UNAUTHORIZED DISCLOSURE OF INTELLIGENCE IDENTITIES AGAINST THE REAL AND CERTAIN DAMAGE SUCH DISCLOSURES CAUSE, AND WE MUST ACCEPT THE NECESSITY TO MORE EFFECTIVELY DETER, WITH CAREFULLY CRAFTED CRIMINAL SANCTIONS, THE UNAUTHORIZED DISCLOSURE OF THE CLASSIFIED IDENTITIES OF OUR INTELLIGENCE OFFICERS, AGENTS, AND SOURCES. THE ADMINISTRATION'S PREFERRED STATUTORY LANGUAGE FOR

FOR SECTION 701 IS THAT PROPOSED BY THE JUSTICE DEPARTMENT BEFORE THIS COMMITTEE IN TESTIMONY ON H.R. 5615, THE COMMITTEE'S "INTELLIGENCE IDENTITIES PROTECTION ACT." THE ADMINISTRATION PROPOSAL WOULD PROHIBIT DISCLOSURES OF INTELLIGENCE IDENTITIES WHICH ARE KNOWINGLY BASED ON CLASSIFIED INFORMATION, OR WHICH ARE MADE BY CURRENT OR FORMER EMPLOYEES WHO HAVE HAD ACCESS TO INFORMATION REVEALING INTELLIGENCE IDENTITIES. IT WOULD NOT PROHIBIT PROSECUTION OF THOSE WHO ARE ACCOMPLICES OF OR CONSPIRATORS WITH PERSONS MAKING SUCH DISCLOSURES.

FIFTH AND FINALLY, MR. CHAIRMAN, THE ADMINISTRATION ALSO BELIEVES THAT AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA) IN ADDITION TO THOSE PROPOSED BY HR. 6588 ARE WARRANTED. OVER THE COURSE OF THE CHARTER PROCESS SIGNIFICANT INADEQUACIES IN THE FISA HAVE BECOME APPARENT. THESE DEFICIENCIES WERE NOT FORESEEN AT THE TIME FISA WAS ENACTED AND THEY SHOULD BE REMEDIED AS SOON AS POSSIBLE. THE ADDITIONAL AMENDMENTS INCLUDE:

A. MODIFICATION OF THE TARGETING STANDARDS TO PERMIT TARGETING OF DUAL NATIONALS WHO OCCUPY SENIOR POSITIONS IN

THE GOVERNMENT OR MILITARY FORCES OF FOREIGN GOVERNMENTS, WHILE AT THE SAME TIME RETAINING UNITED STATES CITIZENSHIP.

B. MODIFICATION OF THE TARGETING STANDARDS TO PERMIT TARGETING OF FORMER SENIOR FOREIGN GOVERNMENT OFFICIALS EVEN IF THEY ARE NOT ACTING IN THE UNITED STATES AS MEMBERS OF A FOREIGN GOVERNMENT OR FACTION.

C. EXTENSION OF THE EMERGENCY SURVEILLANCE PERIOD FROM 24 TO 48 HOURS.

ADMINISTRATION PROPOSALS FOR THESE FISA AMENDMENTS AND OTHER AREAS I HAVE MENTIONED ARE SET FORTH IN THE APPENDIX TO MY STATEMENT.

MR. CHAIRMAN, I BELIEVE THAT WE ARE IN THE MIDST OF AN IMPORTANT EVOLUTION. WE ARE ATTEMPTING TO INTEGRATE THE LEGISLATURE OF THIS COUNTRY MORE INTIMATELY INTO THE INTELLIGENCE PROCESS THAN HAS EVEN BEEN ATTEMPTED ANYWHERE BEFORE. THIS NEW PROCESS HAS BEEN EVOLVING OVER A NUMBER OF YEARS NOW. I KNOW THAT WE IN THE EXECUTIVE BRANCH ARE PLEASED WITH THE WAY THIS RELATIONSHIP HAS DEVELOPED. I HOPE THAT THE MEMBERS OF THIS COMMITTEE ARE ALSO. THE ENACTMENT OF LEGISLATION WHICH WOULD CHARTER OUR INTELLIGENCE ACTIVITIES ANEW WOULD CODIFY THE PRACTICES WE HAVE DEVELOPED AND

ENSURE THEIR PERPETUATION. IN THIS LIGHT, WE SHOULD RECOGNIZE THAT:

-- A STRONG SYSTEM OF OVERSIGHT AND ACCOUNTABILITY ALREADY EXISTS AND IS FUNCTIONING EFFECTIVELY. THIS COMMITTEE AND ITS COUNTERPART IN THE SENATE ARE KEY ELEMENTS IN THAT SYSTEM.

-- EXECUTIVE ORDER 12036 AND THE ATTORNEY GENERAL GUIDELINES WHICH HAVE BEEN ISSUED PURSUANT TO IT SET FORTH RIGOROUS STANDARDS OF CONDUCT FOR INTELLIGENCE ACTIVITIES. THE PROPER EXECUTION OF THE EXECUTIVE ORDER AND THE ATTORNEY GENERAL'S GUIDELINES IS SUBJECT TO CONGRESSIONAL OVERSIGHT, AS WOULD BE THE GUIDELINES AND PROCEDURES ESTABLISHED UNDER TITLE II CONCERNING COLLECTION OF INFORMATION ABOUT UNITED STATES PERSONS.

-- THE ONE AREA WHERE PRESENT PRACTICES ARE INADEQUATE IS THE SECURITY OF INTELLIGENCE OPERATIONS AND THE PROTECTION OF INTELLIGENCE SOURCES AND METHODS AND SUBSTANTIVE DATA. AN ADEQUATE LEGAL BASIS FOR SUPPORT HERE IS NOT NOW IN EXISTENCE AND IS URGENTLY NEEDED.

I MAKE THESE POINTS BECAUSE THE CHARTER IS A COMPLEX PIECE OF LEGISLATION. CAREFUL STUDY AND ANALYSIS WILL BE REQUIRED. THIS IS, AS WE ALL KNOW, A SHORT LEGISLATIVE YEAR, AND THERE IS SOME QUESTION AS TO WHETHER BOTH HOUSES OF THE CONGRESS WILL BE ABLE TO TAKE UP AND PASS THE CHARTER EVEN IF AGREEMENT BETWEEN THE LEGISLATIVE AND EXECUTIVE BRANCHES ON THE KEY OVERSIGHT ISSUES IS ACHIEVED QUICKLY.

MR. CHAIRMAN, THE PRESIDENT, THE INTELLIGENCE COMMUNITY, AND I ARE COMMITTED TO THE CONCEPT OF INTELLIGENCE CHARTER LEGISLATION. CONTINUED UNCERTAINTY OVER WHAT THE AMERICAN PEOPLE EXPECT FROM THEIR INTELLIGENCE SERVICE WILL HAVE AN ADVERSE EFFECT ON THE INTELLIGENCE COMMUNITY'S ABILITY TO DO ITS JOB EFFECTIVELY. I AM CONFIDENT THAT THIS COMMITTEE WILL REPORT OUT A BILL WHICH PROVIDES ESSENTIAL AUTHORITIES, REINFORCES NEEDED GUIDELINES, ENSURES PROPER CONGRESSIONAL OVERSIGHT, CONFIRMS OUR ABILITY TO PROTECT INTELLIGENCE SOURCES AND METHODS, AND CAN BE ENACTED THIS YEAR.

APPENDIX TO THE STATEMENT OF
THE DIRECTOR OF CENTRAL INTELLIGENCE

Add the following new section in Title I:

PRESIDENTIAL AUTHORITY IN WAR OR HOSTILITIES

Sec. 146. (a) The President may waive any or all of the restrictions on intelligence activities set forth in this Act during any period--

(1) in which the United States is engaged in war declared by Act of Congress; or

(2) covered by a report from the President to the Congress under the War Powers Resolution, 87 Stat. 555, to the extent necessary to carry out the activity that is the subject of the report.

(b) When the President utilizes the waiver authority under this section, the President shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate in a timely manner and inform those committees of the facts and circumstances requiring the waiver.

Amend sections 125 and 142 of Title I as follows:

CONGRESSIONAL NOTIFICATION

Sec. 125. A report of the description and scope of each special activity authorized under section 123(a)(1) and each category of special activities authorized under section 123(a)(2) shall be made in a timely fashion to the House Permanent Select Committee on Intelligence and the Senate Select committee on Intelligence in accordance with section 142 of this Act.

CONGRESSIONAL OVERSIGHT

Sec. 142. (a) Consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches and by law to protect sources and methods, the head of each entity of the intelligence community shall--

(1) keep the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, that entity of the intelligence community;....

Substitute the following for the provision in Title VII:

TITLE VII - PROHIBITING THE DISCLOSURE OF INFORMATION IDENTIFYING CERTAIN INDIVIDUALS ENGAGED OR ASSISTING IN FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES.

STATEMENT OF FINDINGS

Sec. 701. (a) The Congress hereby makes the following findings:

(1) Successful and efficiently conducted foreign intelligence activities are essential to the national security of the United States.

(2) Successful and efficient foreign intelligence activities depend in large part upon concealment of relationships between components of the United States government that carry out those activities and certain of their employees and sources of information.

(3) The disclosure of such relationships to unauthorized persons is detrimental to the successful and efficient conduct of foreign intelligence and counterintelligence activities of the United States.

(4) Individuals who have a concealed relationship with foreign intelligence components of the United States government may be exposed to physical danger if their identities are disclosed to unauthorized persons.

DEFINITIONS

(b) As used in this Section:

(1) "Discloses" means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available to any unauthorized person.

(2) "Unauthorized" means without authority, right or permission pursuant to the provisions of a statute or Executive Order concerning access to national security information, the direction of the head of any department or agency engaged in foreign intelligence activities, the order of a judge of any United States court, or a resolution of the United States Senate or House of Representatives which assigns responsibility for the oversight of intelligence activities.

(3) "Covert agent" means any present or former officer, employee, or source of an intelligence agency or a member of the Armed Forces assigned to duty with an intelligence agency (i) whose present or former relationship with the intelligence agency is protected by the maintenance of a cover or alias identity, or in the case of a source, is protected by the use of a clandestine means of communication or meeting to conceal the relationship and (ii) who is serving outside the United States or has within the last five years served outside the United States.

(4) "Intelligence agency" means the Central Intelligence Agency or any foreign intelligence component of the Department of Defense.

(5) "Classified information" means any information or material that has been determined by the United States government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.

CRIMINAL PENALTY

(c) Disclosure of Intelligence Identities.

(1) Whoever knowingly discloses information that correctly identities another person as a covert agent, with the knowledge that such disclosure is based on classified information, or attempts to do so, is guilty of an offense.

(2) An offense under this section is punishable by a fine of not more than $50,000 or imprisonment for not more than ten years, or both.

(3) There is jurisdiction over an offense under this section committed outside the United States, if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

CRIMINAL PENALTY

(d) Disclosure of Intelligence Identities by Government Employees.

(1) Whoever, being or having been an employee of the United States government with access to information revealing the identites of covert agents, knowingly discloses information that correctly identifies another person as a covert agent, or attempts to do so, is guilty of an offense.

(2) An offense under this section is punishable by a fine of not more than $25,000 or imprisonment for not more than five years, or both.

(3) There is jurisdiction over an offense under this section committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

Add the following additional amendments to the Foreign Intelligence Surveillance Act of 1978:

-- Section 101(b)(2) is amended by deleting "or" at the end of (C), changing the period at the end of (D) to a semi-colon, adding "or" at the end of (D), and adding the following new provision:

"(E) is a current or former senior officer of a foreign power as defined in subsection (a)(1) or (2)"

-- Section 105(e)(2) is amended by inserting "search or" before all appearances of "surveillance," by inserting "physical search or" before all appearances of "electronic surveillance," and by deleting "twenty-four" wherever it appears and inserting in lieu thereof "forty-eight."