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INTELLIGENCE OVERSIGHT ACT OF 1980

MAY 15 (legislative day, JANUARY 3), 1980.—Ordered to be printed

Mr. BAYH, from the Select Committee on Intelligence, submitted the following

REPORT

[To accompany S. 2284]

The Select Committee on Intelligence, to which was referred the bill (S. 2284) to authorize the intelligence system of the United States by the establishment of a statutory basis for the national intelligence activities of the United States, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

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

That this Act may be cited as the "Intelligence Oversight Act of 1980".

SEC. 2. Section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) is amended by striking out in subsection (a) "and reports, in a timely fashion" and all that follows down through the period in subsection (b) and inserting in lieu thereof a period and the following: "Each such operation shall be considered a significant anticipated intelligence activity for the purposes of section 501 of the National Security Act of 1947.".

SEC. 3. (a) The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end thereof the following new title:

"TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

"CONGRESSIONAL OVERSIGHT

"SEC. 501. (a) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of

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Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

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

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

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

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

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

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

Amend the title so as to read:

A bill to strengthen the system of Congressional oversight of intelligence activities of the United States.

HISTORY OF THE BILL

S. 2284 was introduced on February 8, 1980, as the National Intelligence Act of 1980, by Senator Huddleston, chairman of the Subcommittee on Charters and Guidelines of the Select Committee on Intelligence. The bill was cosponsored by Senator Mathias, vice-chairman of the Subcommittee on Charters and Guidelines, and by Senator Bayh and Senator Goldwater, chairman and vice-chairman of the Select Committee. It was introduced in the House as H.R. 6588 by Representative Boland, chairman of the House Permanent Select Committee on Intelligence.

Hearings on the bill began before the Select Committee on Intelligence on February 21, 1980. From the outset a principal issue was the provision for congressional oversight of intelligence activities,

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

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

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

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

Position of the Administration

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

General Statement

The purpose of this Act is to place in statute the oversight process that has been in effect since 1976. It is based on the cumulative experience of successive oversight bodies since 1947, but primarily on the

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

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

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

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

Subsection (c) provides for the establishment of procedures by the President and by each oversight committee to carry out the foregoing provisions. Subsection (d) recognizes the responsibility of each House to ensure, by rule or resolution, the protection from unauthorized dis-

closure of sensitive information furnished under this section, and the responsibility of each oversight committee under such procedures to bring to the attention of its respective House, or the appropriate committees, any matter requiring their attention.

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

Section-by-Section Analysis

Amendment to section 662 of the Foreign Assistance Act of 1961

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

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

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

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

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

There is no mention in the Constitution of intelligence activities. Whatever constitutional authorities may exist must follow from other constitutionally conferred duties, such as the power of the President to act as Commander-in-Chief and to make treaties with the advice and consent of the Senate, or the power of the Legislature to "provide for the common defense," "to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations," "to declare war, . . . and to make rules concerning captures on land and water," "to make rules for the government and regulation of the land and naval forces," "to make all laws which shall be necessary and proper for carrying into execution . . . all other powers vested by this Constitution in the government of the United States, or in any Department or officer thereof," and to insist that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law."

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

Section 501(a)—Preambular Clause: "Protection from Unauthorized Disclosure"

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

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

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

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

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

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

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

"FULLY AND CURRENTLY INFORMED"

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

"SIGNIFICANT ANTICIPATED INTELLIGENCE ACTIVITIES"

Section 501(a)(1) specifically states that the committees will be kept "fully and currently informed . . . of significant anticipated intelligence activities." Such activities include CIA covert operations and, among other things, certain collection and counterintelligence activities. As was stated in the legislative history of S. Res. 400, Re-

port of the Committee on Government Operations, U.S. Senate, to Accompany S. Res. 400, 1976, pages 26–27:

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

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

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

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

The Executive Branch has argued that the President's "constitutional authorities and duties," mentioned in the preamble, might permit a withholding of prior notice through the exercise of the President's constitutional authority. The Constitution does not specifically

address the allocation of powers to the President associated with national security and foreign policy matters beyond such functions as the duties of the Commander-in-Chief and the power of the President to appoint ambassadors. Congress is given the powers to declare war, raise and support armed forces, and make rules and regulations governing their use, and, in the Senate, give advice and consent to treaties and the appointment of ambassadors. Those powers concerning national security and foreign policy are in a "zone of twilight" in which the President and Congress share authority whose distribution is uncertain.[1]

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

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

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

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

Section 501(a)(1)(A)—Approval of Committees Not Required for Anticipated Intelligence Activity

Section 501(a)(1)(A) states simply that prior notice is required but "the foregoing provision shall not require approval of such committees as a condition precedent to the initiation of any such anticipated intelligence activity." This intent can be traced to S. Res. 400 where it is expressed in different terms in Section 11(A). During debate on the measure, Senator Howard Baker requested such a proviso to be added:

> "to make absolutely clear that the inclusion of the words 'including any significant anticipated activities' did not constitute a requirement that the Select Committee either give its consent or approval before any covert action or intelligence activity could be implemented by the Executive branch. Rather, the intent of [in-

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[1] *U.S. v. American Tel. and Tel. Co.*, 567 F.2d 121, 128 (D.C. Cir. 1977). *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 637–638 (1952), opinion of Mr. Justice Jackson.

cluding those words] is to require prior consultation between the Committee and the intelligence community, but not prior consent or approval." [2]

Section 501(a)(1)(B)—Limited Prior Notice

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

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

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

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

* * * * * * *

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

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

Many of the mandated duties of the Committee do not require access to sources and methods, but some do. In the usual course of the Committee work, the identities of human sources are not needed, nor have they been requested. A hypothetical case would serve to illustrate the point. An ally of the United States has a source highly placed in the cabinet of Ruritania. This ally is willing to give the information to the United States provided that the nature of the source is disclosed to the President and the Director of Central Intelligence only and no one else. The information is of critical importance to the United States. The President therefore would agree to such a condition, and the commit-

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

tees would not seek nor expect to receive the source of such information. However, in the event that the information turned out to be spurious and was actually contrived by the Ruritanian government and caused harm to the United States in some way, the intelligence oversight committees would, in the course of their proper inquiries, have every right to learn the identity of the source. This underlines the general approach of the oversight committee. The right of full access to any intelligence information implies some measure of discretion. It does not mean trucking the entire product of the intelligence community each day to the Committee offices. It does mean, however, that should the Committee believe it necessary, in the conduct of its mandated duties, all the information it desires shall be supplied consistent with subsection (a). The occasions when any information including sources and methods might be sought are almost always confined to abuse or misuse situations or in the case of intelligence failures. The Committee has exercised this authority on a number of occasions over the past five years without any unauthorized disclosure of classified information or sensitive sources and methods.

Section 501(a)(3)—Reports on Illegal Activities or Significant Intelligence Failures

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

* * * * * * *

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

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

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

The Director of Central Intelligence and the head of each agency are also to report to the intelligence oversight committees each significant intelligence failure in the work of that entity or for which that entity is responsible; this report would likewise contain a description of any corrective actions which have been taken or which are planned to ensure that such a failure does not recur. Significant fail-

ures to be reported would include major errors in analysis and/or prediction, failures in technical collection systems or other clandestine operations, and failures to protect sensitive sources and methods information from unauthorized disclosure.

Section 501(b)—Timely Notice

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

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

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

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

Section 105(c)—Presidential and Committee Procedures

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

The authority for procedures established by the President is based on Executive Order 12036 and is intended to apply to the Executive branch. The President may, for example, prescribe procedures under which certain information is to be furnished by a designated official. Such procedures shall ensure that the oversight committees are fully

and currently informed, that they are furnished requested information, and that they receive reports of illegal activities and intelligence failures in accordance with subsections (a) and (b).

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

Section 501(d)—Congressional Procedures to Protect National Security Information

"SEC. 501. (d) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the Select Committees or to Members of the Congress under this section. In accordance with such procedures, each of the Select Committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees."

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

Both the House of Representatives through H. Res. 658, 95th Congress, and the Senate through Senate Resolution 400, 94th Congress, have already established certain procedures to protect national security information or materials provided to them from unauthorized disclosure as called for in subsection (d). The provisions that contribute to effective physical security and sound security practices which would protect against unauthorized disclosure are contained in these resolu-

tions and are envisioned by subsection (d). Under the procedures required by subsection (d), the Select Committee is to call to the attention of the Senate, or any appropriate Senate Committee, intelligence matters requiring its attention.[3] This provision is subject to the security restrictions in the procedures adopted under subsection (d). The relevant sections of Senate Resolution 400 are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

"Upon conclusion of the consideration of such matter in closed session, which may not extend beyond the close of the ninth day on which the Senate is in session following the day on which such matter was reported to the Senate, or the close of the fifth day following the day agreed upon jointly by the majority and minority leaders in accordance with section 133(f) of the Legislative Reorganization Act of 1946 (whichever the case may be), the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by one or more of the means specified in clauses (A), (B), and (C) of the second sentence of this paragraph. Any vote of the Senate to disclose any information pursuant to this paragraph shall be subject to the right of a Member of the Senate to move for reconsideration of the vote within the time and pursuant

to the procedures specified in rule XIII of the Standing Rules of the Senate, and the disclosure of such information shall be made consistent with that right.

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

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

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

"(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee."

COST ESTIMATE OF CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C. May 9, 1980.

Hon. BIRCH BAYH,
Chairman, Select Committee on Intelligence,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2284, a bill to strengthen the system of Congressional oversight of intelligence activities of the United States, as ordered reported by

the Senate Select Committee on Intelligence on May 8, 1980. Based on this review, the CBO estimates that this bill will have no budget impact.

Should the Committee so desire, we would be pleased to provide further detail.

Sincerely,

ROBERT D. REISCHAUER,
(For Alice M. Rivlin, Director).

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

(61 Stat. 497)

CHAPTER 343

AN ACT To promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

That this Act may be cited as the "National Security Act of 1947".

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TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

CONGRESSIONAL OVERSIGHT

SEC. 501. (a) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to

intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

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

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

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

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

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

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

(75 Stat. 424)

PUBLIC LAW 87-195

AN ACT To promote the foreign, security, and general welfare of the United States by assisting peoples of the world in their efforts toward economic development and internal and external security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PART I

CHAPTER 1—SHORT TITLE AND POLICY

SEC. 101. SHORT TITLE.—This part may be cited as the "Act for International Development of 1961".

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PART III

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CHAPTER 3—MISCELLANEOUS PROVISIONS

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SEC. 662. LIMITATION ON INTELLIGENCE ACTIVITIES.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States [and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives]. *Each such operation shall be considered a significant anticipated intelligence activity for the purposes of section 501 of the National Security Act of 1947.*

[(b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolutions.]

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