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GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

Pro leg

8-28-78
OLC

August 25, 1978

OLC #78-0349/119

MEMORANDUM FOR: MESSERS. BASS, CINQUEGRANA, COLLINS, DONOHUE,
HOSKINSON, HOTIS, SILVER AND SMITH

SUBJECT: Third Draft, Title II, Intelligence Charters
Legislation

Pro leg.

Attached is a third draft of Title II incorporating the changes discussed last week and indicating the points at which issues have been raised thus far.

The section numbers are the same as in previous drafts. This means some discontinuity in numbering as the drafting process proceeds, but it facilitates comparisons with earlier drafts. New provisions for which there are not available numbers are numbered as "A" sections.

The following sections of this draft are new:

218	230	293
224A	231	294
224B	231A	
227A	231B	
229A		

for Jack E. Thomas
Deanne C. Siemer

TITLE II

Page

PART A: GENERAL PROVISIONS

Sec. 201.	Short title	1
Sec. 202.	Statement of Purposes	1
Sec. 203.	Definitions	2
Sec. 204.	Attorney General Responsibilities	7

PART B: AUTHORITY TO COLLECT, RETAIN AND DISSEMINATE INFORMATION

Subpart 1: General Authority for collection, Retention and Dissemination of Information From or Concerning United States Persons

Sec. 211.		10
-----------	--	----

Subpart 2: Authority to Collect Intelligence From or Concerning United States Persons

Sec. 212.	Authority to Collect Counter-intelligence and Counterterrorism Intelligence	11
Sec. 213.	Authority to Collect Foreign Intelligence	12
Sec. 214.	Authority to Collect Information Concerning Targets of Foreign Powers or International Terrorists	14
Sec. 215.	Authority to Collect Information Concerning Potential Sources of Intelligence or Operational Assistance	15
Sec. 216.	Authority to Collect Information for Security Purposes	15
Sec. 217.	Authority to Collect Other Information Necessary for Intelligence Activities	17
Sec. 218.	Authority to Collect Information for Communications Security Purposes	18
Sec. 219.	Duration and Review of Collection	18

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

	Page
<u>Subpart 3: Authority to Collect Information from or Concerning Foreign Persons within the United States</u>	
Sec. 220.	20
<u>Subpart 4: Authority to Retain Personal Infor- mation</u>	
Sec. 221.	22
<u>Subpart 5: Authority to Disseminate Personal Information</u>	
Sec. 222.	24
<u>Subpart 6: Other Authority to Retain and Disseminate Information</u>	
Sec. 223. Retention and Dissemination of Personal Information for Oversight and Other Purposes	28
Sec. 224. Retention and Dissemination of Information from Electronic Surveillance	29
Sec. 224A. Retention and Dissemination of Information that is not Personal Information	29
Sec. 224B. Collection, Retention and Dissemi- nation of Information that does not Concern United States Persons or Foreign Persons who are in the United States	30

PART C: LIMITATIONS ON INTELLIGENCE ACTIVITIES

<u>Subpart 1: Electronic surveillance outside the United States</u>	
Sec. 225. Authorization for Electronic Sur- veillance Outside the United States	31
Sec. 226. Requirement of Attorney General Approval	31
Sec. 227. Attorney General Approval	31
Sec. 227A. Authorization for Special Court Order	34

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

	Page
Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6	
Sec. 228. Emergency Procedures	35
Sec. 229. Cooperative or Liaison Arrangements	38
Sec. 229A. Relationship to Electronic Surveillance Under Title III	38
<u>Subpart 2: Searches</u>	
Sec. 230. Authorization for Searches	38
Sec. 231. Authorization for Special Court Order	39
Sec. 231A. Attorney General Approval	40
Sec. 231B. Emergency Procedures	41
<u>Subpart 3: Participants in the Intelligence Activities</u>	
Sec. 232. Religious and Journalist Vocations, Certain Government-Sponsored Travel	42
Sec. 234. Persons who are Research Subjects	43
Sec. 236. Voluntary Contacts	44
Sec. 237. Provision of Assistance	45
<u>Subpart 4: Relationships with Other Organizations</u>	
Sec. 241. Assistance to Law Enforcement Authorities	45
Sec. 242. Publications	47
Sec. 243. Cover Arrangements	48
Sec. 244. Contracting	48
Sec. 245. Undisclosed Participation in United States Organizations	49
<u>Subpart 5: Activities Undertaken Indirectly</u>	
Sec. 251.	51
<u>Subpart 6: Presidential Waiver of Restrictions in Time of War or Hostilities</u>	
Sec. 261.	51

PART D. PROCEDURAL REQUIREMENTS FOR INTELLIGENCE
ACTIVITIESSubpart 1: Special Activities

Sec. 251. 54

Subpart 2: Foreign Intelligence Collection
Activities

Sec. 252. 56

Subpart 3: Counterintelligence and Counter-
terrorism Intelligence Activities

Sec. 253. 57

PART E: REMEDIES

Subpart 1: Civil DamagesSec. 282. Joint and Several Personal and
Governmental Liability 58

Sec. 283. Sole Governmental Liability 61

Sec. 284. Jurisdiction 62

Sec. 285. Statute of Limitations 62

Sec. 286. Exclusion Remedy 62

Sec. 287. Fees and Costs 62

Subpart 2: Administrative Sanctions

Sec. 289. Disciplinary Action 63

Sec. 290. Attorney General Referral 64

Subpart 3: Privileged Communications and
Rulemaking

Sec. 291. Protection of Privileged Communications 64

Sec. 292. Administrative Rule-making 65

Sec. 293. Other Sanctions 65

Sec. 294. Repealer 65

TITLE II -- INTELLIGENCE REGULATION

PART A. GENERAL PROVISIONS

SHORT TITLE

Sec. 201. This title may be cited as the "Intelligence Regulation Act of 1979."

STATEMENT OF PURPOSES

Sec. 202. It is the purpose of this Act --

(1) to provide statutory authorization for intelligence activities that are directed against United States persons or performed within the United States and that are necessary for the conduct of the foreign relations and the protection of the national security of the United States;

(2) to establish statutory standards for United States intelligence activities and effective means to ensure that such activities are conducted in accordance with the Constitution and laws of the United States; and

(3) to delineate the roles of the Attorney General and other Government officials who are responsible for insuring that intelligence activities of the United States are conducted in accordance with the Constitution and laws of the United States.

DEFINITIONS

Sec. 203. (a) Except as otherwise provided in this section, the definitions in Title I of this Act shall apply to this Title. Reference to law within this Title are to the laws of the United States.

(b) As used in this Title --

(1) The term "administrative purpose" means a purpose related to the contracting, personnel matters, house-keeping services, leasing and other functions of a government agency that are necessary to support its substantive programs.

(2) The term "agent of a foreign power" means

(A) A person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including covert activities intended to affect the political or governmental process), sabotage, or international terrorist activities, or who conspires with or knowingly aids or abets such a person in engaging in such activities;

(B) A person who is an officer or employee of a foreign power;

(C) A corporation, corporate subsidiary, or other entity that is owned or controlled, directly or indirectly, by a foreign power; or

(D) A person acting for, or pursuant to the direction of, a foreign power provided that the fact that a person's activities may benefit or further the aims of a foreign power, standing alone, is not sufficient to support a finding that a person is an agent of a foreign power.

(3) The term "clandestine intelligence activity" means an activity conducted by or on behalf of a foreign power by an intelligence or security service in a manner intended to conceal the nature or fact of such activity or the role of such foreign power, and any activity conducted in support of such activity.

(4) The term "collecting agency" means, with respect to information, the departments and agencies that collect the information.

(5) The term "cover" means the method or means by which the true identity or affiliation with an entity of the intelligence community by an officer, employee, agent or activity of the United States Government is disguised or concealed, but does not include any method or means by which the true identity or affiliation of an informant is disguised or concealed.

(6) The term "electronic surveillance" for purposes of this Title means the interception of wire, radio or oral communications through the use of electronic, mechanical or other surveillance or monitoring devices.

(7) The term "foreign electronic surveillance" means the interception of wire, radio or oral communications through activities conducted by or on behalf of the United States Government that are targeted against a particular, known United States person without the consent of at least one of the parties to such communication, or that use electronic, mechanical or other surveillance or monitoring devices to acquire information without the knowledge of the persons or activities monitored, when both the sender and receiver of the communication or the person or activity being monitored are outside the United States; the term does not include electronic surveillance as defined in [S.1566/H.R. 7308 as enacted].

(8) The term "foreign organization" means a corporation or unincorporated association that is not a United States person and also means any international organization.

(9) The term "foreign person" means a person or entity that is not a United States person.

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(10) The term "foreign power" means --

(A) a foreign government or any component thereof, whether or not recognized by the United States;

(B) a faction of a foreign nation or nations, not substantially composed of United States persons;

(C) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(D) a foreign-based group engaged in international terrorist activity; or

(E) a foreign-based political organization, not substantially composed of United States persons.

(11) The term "minimization procedures" with respect to foreign electronic surveillance, means procedures promulgated by the heads of the entities of the intelligence community and approved by the Attorney General --

(A) that are reasonably designed in light of the purpose and technique of the surveillance to minimize the acquisition, retention and dissemination of information that is not publicly available and that concerns unconsenting United States persons, and that are consistent with the need of the United States to obtain, produce and disseminate intelligence; and

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(B) under which information that is not publicly available and that is not intelligence may be disseminated in a manner that identifies a United States person, without such person's consent, only if such person's identity is necessary to understand intelligence or to assess its importance, providing that information that is evidence of a crime may be disseminated for the purpose of preventing the crime or enforcing the criminal law.

(12) The term "personal information" means information concerning a specific natural person that identifies the person that is retrievable by name, and that is not publicly available information.

(13) The term "United States organization" means an unincorporated association or corporation that is a United States person.

(14) The term "wire communication" means any communication that is being carried by a wire, cable or other like connection furnished or operated by a common carrier.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

ATTORNEY GENERAL RESPONSIBILITIES

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

Sec. 204. It shall be the duty of the Attorney General to participate in and support the governance of intelligence activities of the United States Government as follows:

(1) participate in the deliberations of committees designated by the National Security Council to review special activities, foreign intelligence collection activities and counterintelligence and counterterrorism intelligence activities to ensure that the intelligence activities of the United States are conducted in accordance with the Constitution and laws of the United States and do not abridge any right protected by the Constitution and laws of the United States.

(2) supervise the intelligence activities of the Federal Bureau of Investigation.

(3) review determinations with respect to collection of intelligence that are --

(A) made with respect to the collection of information from or concerning United States persons under Section 217 of this Title.

(B) made with respect to the collection of information through communications security activities under Section 218 of this Title.

(C) designations of officials empowered to authorize collection of information from or concerning United States persons under Section 219(a) of this Title.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(D) made with respect to the necessity for continuation of intelligence collection activities under Section 219(d) of this Title.

(4) review determinations made with respect to the retention of personal information under Section 221(8) of this Title.

(5) review determinations made with respect to the dissemination of personal information under Section 222(g) of this Title.

(6) authorize the use of specific techniques for the collection of intelligence that are --

(A) foreign electronic surveillance conducted pursuant to Section 226 and 227 of this Title.

(B) physical searches conducted pursuant to Section 231A of this Title.

(C) mail openings conducted pursuant to Section 231A of this Title.

(7) review participation by entities of the intelligence community in law enforcement activities pursuant to Section 241(c) of this Title.

(8) review contracting by entities of the intelligence community when sponsorship of such entities is not revealed.

(9) perform such other functions as may be assigned by the President to protect the rights of United States persons under the Constitution and laws of the United States and the legal rights of any other persons who are in the United States.

PART B: AUTHORITY TO COLLECT, RETAIN AND DISSEMINATE
INFORMATION

Subpart 1: GENERAL AUTHORITY FOR COLLECTION, RETENTION
AND DISSEMINATION OF INFORMATION FROM OR
CONCERNING UNITED STATES PERSONS

Sec. 211. (a) Information from or concerning any United States person may be collected, retained, and disseminated by entities of the intelligence community for any foreign intelligence, counterintelligence or counterterrorism intelligence purpose, or in connection with any special activity, or other authorized function but only in accordance with this part.

(b) Information concerning any United States person may be collected by an entity of the intelligence community, using any collection technique, and may be retained and disseminated, with the consent of that person.

(c) Publicly available information concerning any United States person may be collected by an entity of the intelligence community when such information is relevant to an authorized function of that entity, and may be retained and disseminated.

(d) Activities to collect information that are directed against any United States person by any entity of the intelligence community shall be conducted by the least intrusive means available that will permit collection in a timely and effective manner.

(e) Nothing in this Title shall prohibit any entity of the intelligence community from retaining and

disseminating information concerning any United States person if the information does not identify that person.

(f) Nothing in this Title shall prohibit, limit or otherwise affect the functions of any department or agency that are not intelligence activities, other than activities undertaken by entities of the intelligence community to provide personnel, document, communications or physical security.

(g) Nothing in this Act shall prohibit any entity of the intelligence community from undertaking active or passive measures intended to protect the security of its installations, activities, equipment, classified information and personnel by use of security guards and access controls, requirements that identification credentials be provided, and inspection of briefcases, packages and similar items carried by persons entering or leaving its installations.

Subpart 2: AUTHORITY TO COLLECT INTELLIGENCE FROM OR CONCERNING UNITED STATES PERSONS

AUTHORITY TO COLLECT COUNTERINTELLIGENCE
AND COUNTERTERRORISM INTELLIGENCE

Sec. 212. Counterintelligence or counterterrorism intelligence may be collected by entities of the intelligence community from or concerning any United States person when facts or circumstances indicate that such person may --

(1) be engaged in espionage or any other clandestine intelligence activity, sabotage,

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
international terrorist activity or assassination;

be aiding any person in the conduct of such activity;
be conspiring with any person engaged in such activity;
or be employed by or receiving consideration of value
from an intelligence or security service of a foreign
power.

(2) be the subject of a recruitment effort
for intelligence activities for or on behalf of a
foreign power, provided that such collection is limited
to that necessary to determine --

(A) the identity of such United States
person;

(B) whether there is reasonable basis
to believe such person may be cooperating in such
activity;

(C) whether such person has, has had, or
will have access to any information, disclosure of
which to a foreign power would be harmful to the
United States; and

(D) whether the matter should be referred
to an appropriate law enforcement agency.

AUTHORITY TO COLLECT FOREIGN INTELLIGENCE

Sec. 213. (a) Foreign intelligence may be collected
by an entity of the intelligence community from or concerning
a United States person when a properly designated official

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
of the entity determines that the information sought is necessary foreign intelligence and when facts and circumstances indicate that such person --

- (1) is an agent of a foreign power; or
- (2) resides outside the United States, or holds dual citizenship and is acting on behalf of or in an official capacity for a foreign power or a foreign organization, and the information sought concerns such person's duties or activities.

INFORMATION ISSUE: This section has very broad coverage because of the definition of agent of a foreign power

(b) foreign intelligence in the possession of a United States citizen or a permanent resident alien may be collected by any entity of the intelligence community without the consent of such person if --

(1) a property designated official of the collecting entity determines that such person is in possession of significant foreign intelligence not otherwise obtainable;

(2) collection of information concerning the United States person is limited to information necessary to understanding or assessing the foreign intelligence; and

(3) collection is limited to interviewing any other person to whom such United States person may have voluntarily disclosed such foreign intelligence.

(c) Foreign intelligence from or concerning a United States organization that is a business or commercial organization may be collected by any entity of the intelligence community without the consent of such organization if --

(1) a properly designated official of the collecting entity determines that such intelligence is significant foreign intelligence not otherwise obtainable; and

(2) the information collected does not concern any United States citizen or permanent resident alien except to the extent that such information is necessary to understanding or assessing the foreign intelligence.

AUTHORITY TO COLLECT INFORMATION CONCERNING TARGETS
OF FOREIGN POWERS OR INTERNATIONAL TERRORISTS

Sect. 214. (a) Information may be collected by any entity of the intelligence community from or concerning any United States person when facts and circumstances indicate that such person is or may be engaged in activity or in possession of information or material that is reasonably believed to be the target of any clandestine intelligence activity or the target of any assassination by any foreign person or by any person engaged in international terrorist activity, but only to the extent necessary to protect against such intelligence activity or assassination attempt.

(b) Any person who is the subject of collection of information under this section other than an officer or

employee of the Executive Branch shall be advised of the targetting of intelligence activities of a foreign power or by international terrorist activity, and such person's consent for collection shall be requested unless a properly designated official of the collecting entity determines that --

(1) such action would jeopardize intelligence sources and methods; or

(2) there is reasonable possibility such person may be cooperating with the foreign intelligence service or the international terrorist activity.

AUTHORITY TO COLLECT INFORMATION CONCERNING POTENTIAL SOURCES OF INTELLIGENCE OR OPERATIONAL ASSISTANCE

Sec. 215. Information may be collected by any entity of the intelligence community concerning any United States person who may be a potential source of intelligence or operational assistance, but only to the extent necessary to determine such person's suitability or credibility as such a source.

AUTHORITY TO COLLECT INFORMATION FOR SECURITY PURPOSES

Sec. 216. Information may be collected by an entity of the intelligence community concerning any United States person who --

(1) is allowed or is being considered for access to classified intelligence or other classified information in the custody of such entity, or to intelligence

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

sources and methods information, or who is allowed or is being considered for access to an area controlled by the intelligence entity, in order to determine whether, in accordance with any rule or regulation of such entity or of the Federal government, such person should be denied such access or be excluded from such area;

(2) facts and circumstances indicate may be engaging in an activity that poses a direct and imminent threat to the physical safety of any installation, property, documents or other materials or of any personnel of that entity, but the collection of such information within the United States shall be limited to such information as it necessary to determine whether the matter should be referred to an appropriate law enforcement agency;

(3) is an employee or former employee of the entity of the intelligence community, to determine whether such employee or former employee has violated or intends to violate any rule or regulation of that entity, or any contractual obligation applicable to that employee or former employee pertaining to the security of that entity's installation, personnel, equipment, communications, classified information or intelligence sources or methods.

INFORMATION ISSUE: The comparable section of S. 2525 makes no mention of former employees

(4) is a contractor of the entity of the intelligence community, or an employee of such contractor, to determine whether such contractor or employee of such contractor is in compliance with rules and regulations applicable to such contractor or employee of such contractor pertaining to the security of the intelligence entity's installation, personnel, equipment, communications, classified information or intelligence sources or methods.

AUTHORITY TO COLLECT OTHER INFORMATION
NECESSARY FOR INTELLIGENCE ACTIVITIES

Sec. 217. Information may be collected by an entity of the intelligence community from or concerning a United States person for purposes other than those provided by sections 212 through 216 if a determination is made by the head of the entity, with the concurrence of the Attorney General, that the information is necessary to a lawful intelligence activity, provided that no such activity shall be conducted solely on the basis of religious or political views expressed by an individual or group, or the exercise of any right to petition the government, or solely directed against the exercise of any right protected by the Constitution and laws of the United States.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

ISSUE: The Department of Justice would add:
"and (3) that such determination is reported promptly to the Permanent Select Committee on Intelligence of the House of Representatives and to the Select Committee on Intelligence of the Senate."

AUTHORITY TO COLLECT INFORMATION FOR
COMMUNICATIONS SECURITY PURPOSES

Sec. 218. Information may be collected by an entity of the intelligence community concerning any United States person for communications security purposes if such collection is within the authorized functions of the collecting entity. The collection, retention and dissemination of such information shall be in accordance with procedures, promulgated by the head of the collecting entity and approved by the Attorney General, reasonably designed in light of the purpose and technique of the information collection to ensure that information that is not publicly available and that concerns unconsenting United States persons will be collected, retained and disseminated only to the extent reasonably necessary to accomplish the communications security mission of the collecting entity.

DURATION AND REVIEW OF COLLECTION

Sec. 219. (a) The head of each entity of the intelligence community shall designate, subject to the approval of the Attorney General, officials who are empowered to authorize the initiation, renewal or extension of collection of information concerning United States persons under this part and to

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
authorize the use of particular techniques of collection.

(b) Collection of information by an entity of the intelligence community under the authority of this subpart may be initiated only upon written approval of an official designated under subsection (a). Such approval shall be valid for not more than one hundred and eighty days and shall be based on a finding that collection is permitted under this Part. Such approval may be extended in writing for an additional one hundred and eighty days based upon a finding that continuation is necessary and reasonable.

(c) Collection of information under the authority of this subpart may continue beyond the initial one hundred and eighty-day period extension authorized in subsection (b) only if an official designated under subsection (a) makes a written finding at the end of such subsequent one hundred and eighty-day period that continuation is necessary and reasonable.

(d) Each collection activity authorized under this subpart that has continued for a period of three hundred and sixty days and has been extended in conformity with subsection (c) shall be reviewed at the end of such subsequent three hundred and sixty-day period --

ISSUE: The Department of Justice would insert "the first and before each" after the phrase "at the end of" which would thereby require a review at the end of the first year rather than at close of the second year as subsection (d) provides.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

if the subject is an employee of an entity of the intelligence community, by the head of that entity;

(2) if the subject is a member of the Armed Forces, by the appropriate service Secretary;

(3) if the subject is not covered by (1) or (2) above, by the Attorney General or a designee.

(e) Previously approved collection activity shall continue during the review called for in subsection (d) but shall be terminated unless the official conducting the review makes a written finding that continuation is necessary and reasonable.

ISSUE: The redraft of Part B deletes Section 217. "Written Findings," of S. 2525. The Department of Justice believes this section should be included.

Subpart 3: AUTHORITY TO COLLECT INFORMATION FROM OR CONCERNING FOREIGN PERSONS WITHIN THE UNITED STATES

Sec. 220 (a) Information from or concerning any foreign person who is within the United States may be collected, retained and disseminated by entities of the intelligence community for any foreign intelligence, counterintelligence, or counterterrorism intelligence purpose, or in connection with any special activity, or other authorized function but only in accordance with this Part.

(b) Information concerning any foreign person who is within the United States may be collected by an entity of the intelligence community using any collection technique, and may be retained and disseminated, with the consent of that person.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(c) Publicly available information concerning any foreign person who is within the United States may be collected by an entity of the intelligence community when such information is relevant to an authorized function of that entity and may be retained and disseminated.

(d) Activities to collect information that are directed at any foreign person who is within the United States by any entity of the intelligence community shall be conducted by the least intrusive means available that will permit collection in a timely and effective manner.

(e) Information may be collected by an entity of the intelligence community from or concerning any foreign person who is within the United States if --

(1) the facts and circumstances of such person's presence in the United States indicate that such person is an officer or employee of any foreign power or foreign organization;

(2) the facts and circumstances of such person's presence in the United States indicate that such person may engage in espionage or any other clandestine intelligence activity, sabotage, international terrorist activity or assassination;

(3) information concerning such person or reasonably believed to be in the possession of such person is determined by the head of the collecting

intelligence, counterintelligence or counterterrorism intelligence; or

(4) the collection of information concerning such person would be permitted under this Part if such person were a United States person, but any limitation on duration or techniques of collection that would be applicable to collection concerning a United States person shall not apply to collection under this section.

(f) Nothing in this Title shall prohibit any entity of the intelligence community from retaining and disseminating information concerning any foreign person who is within the United States if the information does not identify that person.

Subpart 4: AUTHORITY TO RETAIN PERSONAL INFORMATION

ISSUE: FBI dissents to this section in its entirety; would replace it with general statement of principles and requirement to promulgate procedures approved by the AG.

Sec. 221. (a) Personal information concerning any United States person may be retained in the records or files of an entity of the intelligence community without such person's consent only if --

(1) such information was collected in the course of an authorized intelligence collection activity targeted or directed against that United States person and is relevant to a lawful intelligence purpose;

(2) such information was collected incidentally in the course of an authorized intelligence activity of an entity of the intelligence community; and

(A) it is reasonably believed that such information may provide a basis for initiating collection of information pursuant to the provisions of this title;

(B) such information concerns a possible threat to the physical safety of any person;

(C) it is reasonably believed that such information may be evidence of a crime or may be useful in the investigation or prosecution of a crime that has been or is being committed.

(D) such information is significant to the understanding or assessment of collected intelligence;

(E) such information constitutes foreign intelligence, counterintelligence or counterterrorism intelligence and the United States person concerned is or has been the incumbent of any office of the Executive Branch of the United States Government or any department or agency thereof having significant responsibility for the conduct of United States defense or foreign policy;

of the intelligence entity, with the concurrence of the Attorney General, that retention of the information or category of information is necessary to a lawful intelligence purpose; or

(3) such information is retained for administrative purposes not related to intelligence activities.

(b) Nothing in this section shall prohibit the retention of personal information for a reasonable period for the purpose of determining whether, in conjunction with other information, it satisfies any other criterion for retention.

(c) The provisions of subsection (a) shall apply only to retention of information acquired after the effective date of this Act, and shall not require a review of information acquired prior to the effective date of this Act.

Subpart 5: AUTHORITY TO DISSEMINATE PERSONAL INFORMATION

ISSUE: FBI dissents to the section in its entirety; would replace it with general statement of principles and requirement to promulgate procedures approved by the Attorney General

Sec. 222. (a) Personal information concerning a United States person may be disseminated without the consent of that person only --

(1) in accordance with this section, and

(2) when the information is relevant to authorized government functions performed by the

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
individuals to whom the information is disseminated.

(b) Personal information concerning a United States person may be disseminated within a collecting agency.

(c) Personal information that constitutes foreign intelligence may be disseminated outside the collecting agency if --

(1) the dissemination is to another department or agency of the United States Government and the identity of the United States person is significant to the understanding or assessment of the intelligence; or

(2) the information is foreign intelligence that identifies an official of the Executive Branch having significant responsibility for the conduct of United States defense or foreign policy; or

ISSUE: The Department of Justice opposes subsection (2) on the ground it is too broad and only subsection (1) is needed.

(3) the dissemination is made to a foreign government in furtherance of the interests of the United States and that foreign government has undertaken to treat the information disseminated to it in a manner comparable to that required of intelligence entities of the United States under this Act.

(d) Personal information that constitutes counter-intelligence or counterterrorism intelligence may be disseminated outside the collecting agency if --

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(1) dissemination is to another department or agency having lawful counterintelligence, counterterrorism, or other lawful enforcement responsibilities; or

(2) dissemination is to a foreign government, if the information indicates that the United States person concerned may be engaged in international terrorist activities or in clandestine intelligence activities of direct interest to that foreign government, and if such dissemination is in the interests of the United States.

(3) dissemination is pursuant to procedures approved by the Attorney General and is necessary to the conduct of an investigation by the Federal Bureau of Investigation.

(e) Personal information that relates to any criminal activity may be disseminated outside the collecting agency if --

(1) dissemination is to any Federal, State or local law enforcement agency having investigative or prosecutorial jurisdiction over such criminal activity or responsibility for protecting against such criminal activity; or

(2) dissemination is to a foreign law enforcement agency having investigative or prosecutorial

(3) dissemination is under procedures approved by the Attorney General and is necessary to the conduct of an investigation by the Federal Bureau of Investigation.

(f) Personal information relating to the trustworthiness of any United States person who currently has, has had, or is being considered for access to classified information, or for Federal or contract employment in a position that requires trustworthiness, may be disseminated to the department or agency that employs, employed, or intends to employ that person, or administers a government contract under which that person is or was employed, or is being considered for employment, to the department or agency that granted or intends to grant that person a security clearance or access to classified information or to any department or agency having responsibility to investigate that person's trustworthiness.

(g) Personal information relating to the suitability of any United States person as a source of information or assistance for any lawful intelligence purpose may be disseminated to any entity of the intelligence community, or other department or agency with counterintelligence or counterterrorism responsibilities, requesting such information if there is a need to use such person as a source of information or assistance.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(h) Personal information otherwise may be disseminated if the head of the intelligence entity makes a determination, with the concurrence of the Attorney General that dissemination of that information or that category of information is necessary to a lawful activity of the United States government.

(i) Nothing in this section prohibits the reasonable dissemination of personal information for the purpose of determining whether, in conjunction with other information, it satisfies any of the retention criteria set forth in section 221. The forwarding of raw information for processing prior to analysis shall not be considered dissemination.

Subpart 6: OTHER AUTHORITY TO RETAIN AND DISSEMINATE INFORMATION

RETENTION AND DISSEMINATION OF PERSONAL INFORMATION FOR
OVERSIGHT AND OTHER PURPOSES

Sec. 223. (a) Personal information collected by a means or in a manner prohibited by this Act shall be destroyed as soon as feasible after recognition and shall not be disseminated unless the head of the entity of the intelligence community that is the collecting agency, or a designee, determines --

(1) the information should be retained for purposes of oversight, accountability or redress;

(2) the information evidences an imminent danger to the physical safety of any person and should be disseminated to appropriate law enforcement officials;

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(3) the information is relevant to any administrative, civil or criminal proceeding of which the collecting agency has prior notice and should be disseminated to appropriate officials;

(4) the information is necessary to preserve and maintain the integrity of technical data bases, in which case access shall be limited to that purpose.

(b) This section shall not be construed to prevent the retention, processing or dissemination of information as necessary to determine whether retention or dissemination is authorized by this Act.

RETENTION AND DISSEMINATION OF INFORMATION
FROM ELECTRONIC SURVEILLANCE

Sec. 224. Notwithstanding any other provision of this part, information collected by means of electronic surveillance within the United States as defined in [S. 1566/H.R. 7308] shall be retained and disseminated only in accordance with the provisions of [S. 1566/H.R. 7308].

RETENTION AND DISSEMINATION OF INFORMATION
THAT IS NOT PERSONAL INFORMATION

Sec. 224A. Nothing in this Title shall limit or prohibit any entity of the intelligence community from retaining or disseminating information from or concerning any person that is not personal information.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
COLLECTION, RETENTION AND DISSEMINATION OF
INFORMATION THAT DOES NOT CONCERN UNITED
STATES PERSONS OR FOREIGN PERSONS WHO ARE
IN THE UNITED STATES

Sec. 224B. Nothing in this Title shall limit or prohibit any entity of the intelligence community from collecting, retaining or disseminating information that does not concern United States persons or foreign persons who are in the United States.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
PART C: LIMITATIONS ON INTELLIGENCE ACTIVITIES

Subpart 1: ELECTRONIC SURVEILLANCE OUTSIDE THE UNITED STATES

AUTHORIZATION FOR ELECTRONIC SURVEILLANCE OUTSIDE
THE UNITED STATES

Sec. 225. Electronic surveillance that relates to the conduct of the foreign relations or to the protection of the national security of the United States may be conducted outside the United States or with respect to communications sent to or from any place outside the United States by entities of the intelligence community authorized by statute or by the President to engage in such activities.

REQUIREMENT OF ATTORNEY GENERAL APPROVAL

Sec. 226. No entity of the intelligence community may engage in foreign electronic surveillance, under circumstances in which if conducted in the United States² for law enforcement purposes would require a warrant, except pursuant to authorization by the Attorney General or court order.

ATTORNEY GENERAL APPROVAL

Sec. 227. (a) Authorization by the Attorney General to conduct foreign electronic surveillance shall be based upon a finding that --

(1) it is in the interest of the United States to conduct the foreign electronic surveillance;

(2) there is probable cause to believe that the United States person to be targeted --

(A) is an agent of a foreign power;

(B) is engaged in activities outside the United States which, if engaged in within the United States would support a finding that the person is an agent of a foreign power;

(C) is an officer or employee of a foreign power residing outside the United States whose official duties or communications are likely to constitute foreign intelligence, counterintelligence or counterterrorism intelligence; or

(D) is in collaboration with an intelligence or security service of a foreign power, and has, or has had, access to information or material classified by the United States;

(3) Significant foreign intelligence, counterintelligence or counterterrorism intelligence is likely to be obtained as a result of the foreign electronic surveillance.

(4) less intrusive means cannot acquire intelligence of the nature, reliability and timeliness that is required;

(5) the proposed minimization procedures meet the definition of such procedures under Section 203(b)(11) of this Act; and

(6) the period of time during which the proposed activities are to be conducted is reasonable.

(b) Each application for authorization by the Attorney General shall be made by a Federal officer in writing and shall include --

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(1) the identity of the Federal officer making the application;

(2) the identity or a description of the target of the proposed foreign electronic surveillance;

(3) the nature of the intelligence sought;

(4) a statement of the facts and circumstances relied upon by the applicant to justify targetting the United States person, including the basis for judgment that less intrusive collection capabilities cannot acquire intelligence of the nature, reliability and timeliness that is required;

(5) a statement of the proposed minimization procedures;

(6) a statement whether the activities involve acquisition of information from wire communications, from radio communications, from oral communications, or from the monitoring of another activity, and whether physical entry may be involved;

(7) a statement of the period of time during which the proposed activities are required to be conducted; and

(8) a statement of the facts concerning all previous applications that have been made under this section or under [S. 1566/H.R. 7308 as enacted], involving the United States person

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
specified in the application, and the action taken
on each such previous application.

(c) The authorization of the Attorney General for
foreign electronic surveillance shall be in writing and
shall --

(1) specify the identity or description of the
target;

(2) specify the nature and location of the communica-
tions or other activity to be monitored and state
whether physical entry may be involved;

(3) specify the time period during which
the activities are authorized; and

(4) direct that the minimization procedures
be followed.

AUTHORIZATION FOR SPECIAL COURT ORDER

Sec. 227A. (a) Applications for an order from the Special
Court established pursuant to section ____ (s. 1566/H.R. 7308)
of Title III of this Act are authorized and a judge to whom
an application is made pursuant to this section may, notwith-
standing any other law, grant an order approving foreign
electronic surveillance.

(b) Approval of an application by a judge of the
Special Court pursuant to this section shall be based on a finding
that --

(A) meets one of the criteria of section 227(a)(2) of this Title; or

(B) is a fugitive from United States justice who is outside the United States and whose relationship with a foreign power or a foreign organization is likely to constitute foreign intelligence, counterintelligence or counterterrorism intelligence;

(C) is in communication with a representative or agent of an intelligence or security service of a foreign power and has or has had access to information or material classified by the United States;

(D) is a United States organization that has a relationship with a foreign power or a foreign organization that is likely to constitute foreign intelligence, counterintelligence or counterterrorism intelligence.

(2) significant foreign intelligence, counterintelligence or counterterrorism intelligence is likely to be obtained as a result of the foreign electronic surveillance;

(3) less intrusive means cannot acquire intelligence of the nature, reliability and timeliness that is required;

(4) the proposed minimization procedures meet the definition of such procedures under Section 203(b)(11) of this Act; and

posed activities are to be conducted is reasonable.

(c) The order of the Court approving foreign electronic surveillance shall be in writing and shall meet the requirements of Section 227(c) (1-4) of this Title.

EMERGENCY PROCEDURES

Sec. 228. (a) Foreign electronic surveillance may be targeted against a United States person in an emergency situation without approval by the Attorney General or a court order for a period not to exceed seventy-two hours, provided that --

(1) if the surveillance is to be conducted from a location outside the foreign country in which the United States person is located, the head of the entity of the intelligence community approves the surveillance or

(2) if the surveillance is to be conducted from facilities within the foreign country in which the United States person is located, the United States chief of mission in that country approves the surveillance.

(b) in either of the situations set forth in subsection (a) --

(1) the approving authority shall determine that
Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
an emergency situation exists such that intelligence is
likely to be lost before an authorization could be
obtained with due diligence from the Attorney General
and that the requirements of Section 227 (a) (1-4) are
met;

(2) an application for Attorney General approval
or a court order shall be within seventy-two hours of
the initiation of the surveillance;

(3) the surveillance shall cease when the infor-
mation sought is obtained, when the application for
authorization is denied, or upon the expiration of the
seventy-two hour period without an authorization from
the Attorney General, whichever occurs first; and

(4) information concerning a United States person
obtained before the application for authorization is
granted or denied shall be treated to the maximum
extent feasible in accordance with the minimization
procedures set forth in the application for authoriza-
tion and shall be destroyed and not disseminated if
the application for authorization is denied.

(c) Under conditions of actual or imminent hostilities
that could involve United States military forces, the United
States officer commanding such forces within the foreign
country shall have the same emergency approval authority

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
as is specified in subsection (a) (2) for the United States
chief of mission.

COOPERATIVE OR LIAISON ARRANGEMENTS

Sec. 229. Nothing in this section shall be construed to require any agency or any Federal officer or employee to confirm or deny the existence of any cooperative or liaison relationship that any agency of the United States Government may have with any foreign government or component thereof; to identify any particulars of such cooperative or liaison relationship; or to reveal in any manner whether any information used in support of an application for authorization under Section 227(b) was obtained directly or indirectly from such a relationship or whether any foreign government or component thereof may participate in any foreign electronic surveillance.

RELATIONSHIP TO ELECTRONIC SURVEILLANCE UNDER TITLE III

Sec. 229A. Any activity that is foreign electronic surveillance under this Title and is also electronic surveillance under [S.1566/H.R. 7308] Title III of this Act shall be conducted under Title III of this Act.

Subpart 2: SEARCHES

AUTHORIZATION FOR SEARCHES

Sec. 230. An entity of the intelligence community may conduct unconsented physical searches within the United

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
States, unconsented physical searches directed against
United States persons who are outside the United States,
unconsented opening of mail in United States postal channels
or unconsented opening of mail of a known United States person
when such mail is not in United States postal channels, only
if --

(1) such searches are conducted under the
standards and procedures required by the Constitution
or laws of the United States for law enforcement
purposes; or

(2) such searches are approved by the Special
Court as provided in Section 231; or

(3) such searches are authorized by the
Attorney General as provided in Section 231A.

AUTHORIZATION FOR SPECIAL COURT ORDER

Sec. 231. (a) Applications by an entity of the intelligence
community for an order from the Special Court established
pursuant to section ____ [S.1566/H.R.7308] of Title III of this
Act are authorized and a judge to whom an application is under
pursuant to this Section may, notwithstanding any other law,
grant an order approving

(1) searches that involve unconsented entry or
seizure of the property of a United States person within
the United States;

States postal channels;

(3) searches not involving unconsented entry;

(4) searches involving the seizure of property in the custody of an employee of the United States government; and

(5) unconsented opening of mail of United States persons that is not in United States postal channels.

(b) Approval of an application by a judge of the Special Court pursuant to this Section shall be in writing and shall be based on a finding that

(1) if the search is directed at a United States person, that person meets one of the criteria in Section 227A(b)(1) of this Title;

(2) significant foreign intelligence, counter-intelligence or counterterrorism intelligence is likely to be obtained as a result of the search; and

(3) less intrusive means cannot acquire intelligence of the nature, reliability and timeliness that is required.

ATTORNEY GENERAL APPROVAL

Sec. 231A. (a) The Attorney General may authorize searches specified in Section 231(a)(3)(4) and (5) of this Title.

(b) Approval by the Attorney General of a search pursuant to this Section shall be in writing and shall be based on a finding that --

(1) if the search is directed at a United States person, that person meets one of the criteria in Section 227(a)(2) of this Title;

(2) significant foreign intelligence, counter-intelligence or counterterrorism intelligence is likely to be obtained as a result of the search; and

(3) less intrusive means cannot acquire intelligence of the nature, reliability and timeliness that is required.

EMERGENCY PROCEDURES

Sec. 231B. (a) An entity of the intelligence community may conduct unconsented physical searches within the United States, unconsented physical searches directed against United States persons who are outside the United States, unconsented opening of mail in United States postal channels, or unconsented opening of mail of a known United States person when such mail is not in United States postal channels without approval of the Attorney General or a court order provided that the head of the entity determines that an emergency situation exists such that intelligence is likely to be lost before an authorization or order could be obtained with due diligence and the requirements of Section 231(b)(1)(2) and (3) are met.

(b) Within 72 hours of the undertaking of a search pursuant to subsection (a), the facts and circumstances of the search shall be reported to the Attorney General.

Subpart 3: PARTICIPANTS IN INTELLIGENCE ACTIVITIES

RELIGIOUS AND JOURNALIST VOCATIONS,
CERTAIN GOVERNMENT-SPONSORED TRAVEL

Sec. 232. (a) No entity of the intelligence community may pay or provide other valuable consideration, for engaging in any clandestine intelligence activity for or on behalf of the United States or for providing any intelligence to any department or agency, to any United States person --

(1) who is following a full-time religious vocation, unless an appropriate official of the religious organization with which the person is affiliated is notified that the person is being paid or provided with valuable consideration for such activity; or

(2) who is engaged in travel to or in a foreign country that is sponsored and funded by the United States as part of a United States Government program designed to promote education or the arts, humanities or cultural affairs unless an appropriate official of the sponsoring organization is notified that the person is being paid or provided other valuable consideration for such activity; or

ISSUE: This provision should cover foreign persons brought to the United States under United States Government programs.

(3) who is a journalist or editor employed by a United States organization that publishes on a regular basis for public dissemination any newspaper, magazine, periodical, or that is a news service or television or radio network or station, or that produces or distributes audio or video tapes, unless an appropriate official of the United States organization with which the person is affiliated is notified that the person is being paid or provided other valuable consideration for such activity.

(b) The head of an entity of the intelligence community may waive the provisions of subsection (a) based on a determination that --

(1) the information to be collected or the activity to be engaged in is important to the foreign policy or national security of the United States;

(2) use of other sources is not likely to produce information of the nature, reliability and timeliness required; and

(3) notification as required in subsection (a) would jeopardize intelligence sources or methods.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

ISSUE: The bill contains a restriction on the use of certain categories of persons as a source of operational assistance. The State Department believes a similar provision should be included in the Administration's proposed position.

PERSONS WHO ARE RESEARCH SUBJECTS

Sec. 234. (a) No entity of the intelligence community may sponsor, contract for, or conduct biomedical or behavioral research on any human subject except in accordance with guidelines on research involving human subjects and on consent issued by the Secretary of Health, Education, and Welfare.

(b) The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research shall have jurisdiction to monitor, under appropriate security arrangements, compliance with such guidelines by any entity of the intelligence community that conducts research on any human subject.

INFORMATION ISSUE: The bill contained a provision limiting the use of persons as combatants. That provision has been deleted.

VOLUNTARY CONTACTS

Sec. 236. Nothing in this Act shall be construed to prohibit voluntary contacts with or the voluntary provision of information by any person not an employee of an entity of the intelligence community and any such entity.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

Sec. 237. Nothing in this Act shall be construed to prohibit any person from recommending or assisting in the recruitment of employees, sources of information, or sources of operational assistance for any entity of the intelligence community.

INFORMATION ISSUE: This provision takes the CIA position on dealing with academic institutions and permits contacts with faculty members who are volunteers even if their institutions have prohibited such contacts.

Subpart 4: RELATIONSHIPS WITH OTHER ORGANIZATIONS

ASSISTANCE TO LAW ENFORCEMENT AUTHORITIES

Sec. 241. (a) Except as otherwise provided in this Act, no entity of the intelligence community other than the entities having law enforcement responsibilities may provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or to State or local police organizations within the United States, or may participate in or fund any law enforcement activity within the United States.

(b) Any entity of the intelligence community may --

(1) cooperate with appropriate law enforcement agencies, not including the Law Enforcement Assistance Administration, to protect the personnel and facilities of such entity or to conduct investigations otherwise authorized by this Act;

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(2) participate in law enforcement and training activities to protect against espionage or any other clandestine intelligence activity that may involve a violation of the criminal laws of the United States, sabotage, or any international terrorist activity, narcotics production or trafficking activity or any assassination; and

(3) with the prior approval of a designated official of such entity, provide or receive specialized equipment, technical knowledge, or the assistance of expert persons for use by or provided from any Federal law enforcement agency, or, when lives are endangered, provide support to or receive support from State or local law enforcement agencies.

(c) The provision of assistance by expert personnel for use by or provided from any Federal law enforcement agency shall be governed by procedures approved by the Attorney General.

ISSUE: The Department of Defense would delete subsection (c) or replace it with a provision that reads as follows:

(c) The Attorney General shall be notified in a timely manner of such provision of expert personnel and shall review at least annually all provision of expert personnel.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

Sec. 241A. (a) All entities of the intelligence community shall cooperate as appropriate to further the implementation of this Act providing that such cooperation and mutual assistance does not involve activities prohibited to any agency by provisions of this Act.

(b) Any entity of the intelligence community may --

(1) provide to or receive from any entity of the intelligence community specialized equipment, technical knowledge, or the assistance of expert personnel as mutually agreed between or among the entities involved; and

(2) detail personnel to another entity of the intelligence community when such is mutually agreed between the heads of the departments and agencies involved as being in the interest of the United States.

PUBLICATIONS

Sec. 242. No entity of the intelligence community may --

(1) pay for or otherwise knowingly cause the publication and distribution to the public within the United States of any book, magazine, article, periodical, or video or audio tape unless the involvement of the United States Government is acknowledged publicly; or

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(2) pay for or otherwise knowingly cause the distribution in any foreign country of any book, magazine, article, periodical, or video or audio tape if the purpose of the distribution in such foreign country is a substantial redistribution to the public within the United States unless the involvement of the United States Government is acknowledged publicly.

COVER ARRANGEMENTS

Sec. 243. No entity of the intelligence community may use, an affiliation, real or ostensible, with any United States organization or United States government department or agency for the purpose of establishing or maintaining cover for any officer, employee or agent of such entity, except with the consent of an appropriate official of the organization involved and with the approval of the entity of the intelligence community.

INFORMATION ISSUE: The comparable provision to S. 2525 contains a blanket prohibition on using some kinds of organizations for cover. This provision permits use of any organization with consent.

CONTRACTING

Sec. 244. No entity of the intelligence community may enter into a contract or arrangement for the provision of goods or services with any United States organization, other

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

than routine service contracts, procurement contracts, and transactions carried out under the Economy Act (____ Stat. ____), unless the sponsorship of the entity of the intelligence community is known to an appropriate official of the organization; provided however that sponsorship except with respect to educational institutions may be concealed if it is determined, pursuant to procedures approved by the Attorney General, that such concealment is necessary to maintain essential cover or proprietary arrangements for intelligence activities authorized by this Act.

UNDISCLOSED PARTICIPATION IN UNITED STATES
ORGANIZATIONS

Sec. 245. (a) No person may, except in accordance with this section, join or otherwise participate in any United States organization on behalf of an entity of the intelligence community without disclosing such person's affiliation with the entity to an appropriate official of the United States organization.

(b) The head of an entity of the intelligence community or a designee may authorize participation on behalf of that entity in any United States organization without disclosing affiliation with the entity --

(1) if the United States organization is acting on behalf of a foreign power or is composed primarily of persons who are acting on behalf of a foreign power;

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(2) if collection of information concerning the organization or its members is authorized under Part B of this Title. Such participation shall be limited to the collection of information as authorized by Part B of this Title. Collection of information that is not publicly available may be undertaken only on behalf or after notification of the Federal Bureau of Investigation; or

(3) If it is necessary to prepare the participants for assignment to an intelligence activity outside the United States, for the development of associations and credentials, for the acquisition of scientific and technical information, or for the establishment or maintenance of cover. Such participation shall be conducted so as not to influence the lawful activities of the organization or its members.

(c) Employees of any entity within the intelligence community may participate on behalf of that entity in any United States organization without disclosing affiliation with the entity if --

(1) the participation is limited to attendance at functions that the organization has made open to the public and for which the organization does not require disclosure of affiliation from all persons who attend; or

(2) the participation is limited to the educational and training purposes.

Subpart 5: ACTIVITIES UNDERTAKEN INDIRECTLY

Sec. 251. No entity of the intelligence community and no officer or employee of any entity of the intelligence community shall request or otherwise knowingly encourage, directly or indirectly, any individual, organization or foreign government to engage in any activity in which such entity of the intelligence community is prohibited from engaging; provided however that this restriction shall not prohibit any entity of the intelligence community from requesting another entity of the intelligence community or another department or agency of the United States Government to engage in an activity on behalf of the requesting entity that is within the authorized activities of the organization to which the request is made.

Subpart 6: PRESIDENTIAL WAIVER OF RESTRICTIONS IN TIME OF WAR OR HOSTILITIES

Sec. 261. (a) The President may waive any or all of the provisions of Part C of this Title during --

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

(2) any period 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; or

(3) any period when the President determines that there is an immediate threat to the national security of the United States from a foreign power and that it is necessary to meet that threat to engage in the activities prohibited or restricted by sections 232, 242, 243, 244 or 245 of this Title.

ISSUE: The Department of Justice believes that reference to section 245 should be deleted from this provision.

(b) Whenever the President proposes to exercise waiver authority under this subsection, the President shall notify the committees of the Congress having jurisdiction over intelligence in a timely manner and inform such committees of the facts and circumstances requiring the waiver.

INFORMATION ISSUE: This draft deletes the following sections of S. 2525:

Sec. 134. Prohibition of assassination. This section applies to all persons, not just entities of the intelligence

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

community and therefore should be included in S. 1437, the general revision of Title 18. A part of the Administration's position on S. 2525 would be support for inclusion of an appropriate version of Sec. 134 in S. 1437.

Sec. 135. Prohibition of particular forms of special activities. It is the purpose of the oversight and reporting sections to ensure that special activities are not undertaken for improper purposes. There are also initiatives on these matters in the international areas.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

PART D. PROCEDURAL REQUIREMENTS FOR INTELLIGENCE ACTIVITIES

Subpart 1: SPECIAL ACTIVITIES

Sec. 251(a). Each special activity shall be approved by the President.

INFORMATION ISSUE: There is no standard of approval (such as "important to national objectives") included in this section. Such a standard is included in S. 2525. It is not included in the Executive Order.

(b) Each special activity proposed for approval by the President shall be reviewed by the National Security Council or a committee designated by the National Security Council that includes the Secretary of State, the Secretary of Defense, the Attorney General, the Director of the Office of Management and Budget, the Assistant to the President for National Security Affairs, the Chairman of the Joint Chiefs of Staff, and the Director of National Intelligence, or, when any such officer is unavailable, a representative of such officer. A written recommendation shall be submitted to the President following that review.

(c) Each special activity shall be reviewed at least annually by the National Security Council or a committee designated as in subsection (b) to determine whether the activity should be continued.

(d) Prior to the initiation of special activity, the Director shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select

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Committee on Intelligence of the Senate of the facts and circumstances of such activity. In extraordinary circumstances, a special activity may be initiated without such prior notification if the President determines that such prior notification would result in a delay that would be harmful to the United States, and, within 48 hours, notification is accomplished. This subsection shall not be construed to require the approval of any committee of the Congress prior to the initiation of any special activity.

ISSUE: The NSC staff and the CIA would drop the requirements of prior notification and substitute timely notification. DoD prefers this formulation with a repealer of Hughes-Ryan -- see Sec. 294.

The Justice Department notes the need for statutory provision or report language to permit reporting of categories that include numerous similar actions.

(e) No department or agency other than the Central Intelligence Agency or, during a period of hostilities, the Armed Forces of the United States, may conduct any special activity unless the President determines, with the advice of the National Security Council or a committee designated as in subsection (b) that another department or agency is more likely to achieve the intended United States objective in such special activity.

(f) Any department or agency may provide support for any special activity after the National Security Council or a committee designated as in subsection (b) determines that the intended United States objective in such special activity is likely not to be achieved without such support.

Subpart 2: FOREIGN INTELLIGENCE COLLECTION ACTIVITIES

Sec. 252(a). The President shall specify, in instructions to the National Security Council, the clandestine foreign intelligence collection activities or categories of such activities that are to be approved, prior to implementation, by the President, the National Security Council or a committee designated by the National Security Council that includes the Secretary of State, the Secretary of Defense, the Attorney General, the Assistant to the President for National Security Affairs, and the Director of National Intelligence, or, when any such officer is unavailable, a representative of such officer. The approval of such activities shall be in writing.

(b) Each foreign intelligence collection activity that is implemented after approval under subsection (a) shall be reviewed at least annually by the National Security Council or a committee designated as in subsection (a) to determine whether the activity should be continued.

Subpart 3: COUNTERINTELLIGENCE AND COUNTERTERRORISM INTELLIGENCE ACTIVITIES

Sec. 253(a). The President shall specify, in instructions to the National Security Council, the counterintelligence and counterterrorism intelligence activities or categories of such activities that are to be approved, prior to implementation, by the National Security Council or a committee designated by the National Security Council that includes the Secretary of State, the Secretary of Defense, the Attorney General, the Director of the Office of Management and Budget, the Assistant to the President for National Security Affairs, the Chairman of the Joint Chiefs of Staff, the Director of National Intelligence and the Director of the Federal Bureau of Investigation, or, a designee of any such officer.

ISSUE: The Department of Justice would prefer to use the formulation "when any such officer is unavailable, a representative of such officer" in place of "a designee of any such officer."

(b) The National Security Council or a committee designated as in subsection (a) shall submit to the President at least annually an assessment of the threat to the United States from the activities of the intelligence and security services of foreign powers in the United States.

Aug. 25, 1978

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

PART E. REMEDIES

Subpart 1: CIVIL DAMAGES

JOINT AND SEVERAL PERSONAL AND GOVERNMENTAL LIABILITY

Sec. 282. (a) Any United States citizen or permanent resident alien who is not an agent of a foreign power as defined in section 203(b)(2) of this Title shall have a civil cause of action for money damages against any employee or agent of any entity of the intelligence community and against the United States, jointly and severally, if such person is aggrieved as a direct result of any act or omission committed by such employee or agent under color of law, in which such employee or agent knowingly and deliberately --

(1) authorizes or engages in any intelligence activity without a court order where a court order is required by law or the Constitution;

(2) authorizes or engages in any intelligence activity not authorized by this Act that has as its primary purpose limiting, disrupting or interfering with the exercise of any right of such person protected by the Constitution or laws of the United States; or

ISSUE: The FBI believes this subsection should be narrowed to conform to the proviso to §217 of this draft that was adapted from §241 of the bill.

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6

(3) sponsors, contracts for, or conducts bio-medical or behavioral research on such person, except in accordance with this title.

(b) Civil damages shall be assessed against any employee or agent found liable under subsection (a) and against the United States, jointly and severally, as follows:

- (1) actual damages;
- (2) punitive damages if the act or omission was malicious or with knowledge that it was unlawful; and
- (3) reasonable attorney's fees and other litigation costs reasonably incurred.

(c) Guidelines, procedures and internal regulations promulgated pursuant to this Act to govern the conduct of intelligence activities shall not create any substantive or procedural right enforceable by any party to any civil or criminal action.

(d) A motion to suppress evidence based upon any claimed violation of any provision of this Act shall be granted only if the court finds that the claimed violation upon which the motion was based resulted from action taken maliciously or with knowledge that it was unlawful and there is substantial damage.

(e) It shall constitute a complete defense to any civil action under this title or any criminal action that any act or omission committed by any employee or agent of any

entity of the intelligence community giving rise to such

action was committed in good faith by such employee or agent.

(f) A good faith reliance by an employee or agent of any entity of the intelligence community shall be presumed if the act or omission of the employee or agent was based upon --

(1) a reasonable interpretation of any statute, executive order, directive, procedure, regulation, instruction or other source of guidance issued by the head of the entity or the Attorney General relating to whether a particular act or omission is authorized;

(2) a reasonable belief in the legality of the act or omission based upon prior determination, law or precedent;

(3) reliance upon procedures approved by the Attorney General as applicable to actions that would otherwise be a violation of a statute of the United States, providing that any such action --

(A) is necessary to support the interests of the United States in implementation of legitimate government purposes;

(B) does not involve acts of violence;

(C) does not involve a violation of any provision of this Act;

(D) is necessary to protect against acts of treason, espionage, international terrorist activity;

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110025-6
dangerous clandestine intelligence activities,
narcotics production and trafficking, or assassination;

(4) reliance upon an appropriate court order,
legislative authorization, or Attorney General opinion; or
(5) exercise of public authority.

(g) Notwithstanding the existence of a good faith
defense if an employee or agent of the United States was
acting under color of law, the United States Government shall
be liable for any damages actually sustained by any person
who has a cause of action under this section.

ISSUE: The Department of Justice wishes to
conform this section to the provisions
of their revision to the Tort Claims Act.

SOLE GOVERNMENT LIABILITY

Sec. 283. (a) Any United States citizen or permanent
resident alien who is not an agent of any foreign power as
defined in section 203(b)(2) of this Title shall have a civil cause
of action for money damages against the United States if such
person is aggrieved as a direct result of any act or omission
by any employee or agent of any entity of the intelligence
community that --

(1) violates any provision of this Act;
(2) is committed under color of law; and
(3) violates any right of the aggrieved
person protected by the Constitution.

(b) The United States Government shall be liable only for damages actually sustained by any person who has a cause of action under this section.

ISSUE: The Department of Justice wishes to conform this section to the provisions of their revision to the Tort Claims Act.

JURISDICTION

Sec. 284. The district courts of the United States shall have original jurisdiction for all civil actions for money damages brought under section 282 or 283.

STATUTE OF LIMITATIONS

Sec. 285. No civil action may be brought under section 282 or 283 more than one year after the date on which the aggrieved person discovered or reasonably should have discovered the facts giving rise to a cause of action under this title.

EXCLUSIVE REMEDY

Sec. 286. The remedies provided under sections 282 and 283 shall be the exclusive remedies for violations of the provisions of this Act.

FEES AND COSTS

Sec. 287. (a) The court may award any employee or agent of the United States found not liable in an action brought under section 282 reasonable attorney's fees and other litigation costs reasonably incurred. In any case where the court determines that an action is without any real basis, is

frivolous, or is brought for the purposes of harassment, or for any other improper purpose, the defendant's costs shall be paid by the plaintiff.

(b) The Attorney General, upon recommendation of the head of an entity of the intelligence community, may pay reasonable attorney's fees and other litigation costs reasonably incurred by any employee or agent of such entity against whom a civil action is brought under section 282, subject to recoupment if such fees and costs are awarded under subsection (a).

Subpart 2: ADMINISTRATIVE SANCTIONS

DISCIPLINARY ACTION

Sec. 289. (a) The head of each entity of the intelligence community may take disciplinary action against any officer or employee of that entity for any action or omission that violates the provisions of this Act or any regulation issued thereunder. Notwithstanding any other provision of law, such action may include --

- (1) suspension from employment without pay for a period not to exceed one hundred and eighty days;
- (2) reduction of salary or grade, or both; or
- (3) dismissal from employment.

(b) Before any disciplinary action is taken under this section, the officer or employee shall have the opportunity to present evidence and to cross examine accusers and witnesses offering evidence against such officer or employee.

(c) A disciplinary action taken by the head of an entity of the intelligence community shall be conclusive with respect to questions of law and fact.

(d) Nothing contained in this section shall be construed to effect or limit the authority of the head of any entity of the intelligence community to terminate the employment of any officer or employee of such entity under any other provision of law.

ATTORNEY GENERAL REFERRAL

Sec. 290. In any case in which an employee or agent of any entity of the intelligence community is found guilty or liable under section 282, committed any act that resulted in government liability under section 283, or committed any act or omission that resulted in an award, compromise or settlement by the United States Government under section 2672 of Title 28, United States Code, the Attorney General may refer the matter to the head of the appropriate entity of the intelligence community for such administrative investigation and disciplinary action as may be appropriate.

Subpart 3: PRIVILEGED COMMUNICATIONS, RULEMAKING, OTHER SANCTIONS

PROTECTION OF PRIVILEGED COMMUNICATIONS

Sec. 291. No otherwise privileged communications shall lose its privileged character as a consequence of this Act.

ADMINISTRATIVE RULEMAKING

Sec. 292. The Director of National Intelligence and the head of each entity of the intelligence community shall, in appropriate consultation with the Attorney General, promulgate regulations necessary to carry out the provisions of this Act. Any promulgation of a standard, rule, regulation or procedure to implement this Act shall be exempt from the provisions of section 553 of Title 5, United States Code (the Administrative Procedures Act).

OTHER SANCTIONS

Sec. 293. The provisions of section ___ of Title III [provision in S. 1566 for criminal sanctions for engaging in electronic surveillance (that requires a warrant) without a warrant] shall apply to the knowing and deliberate conduct without a court order of foreign electronic surveillance that requires a court order under section 227A of this Title.

REPEALER

Sec. 294. Section 2421 of Title 22, United States Code, is repealed.

INFORMATION ISSUE: The repeal of Hughes-Ryan will be a very substantial political issue. It should be considered together with the substitute from Hughes-Ryan included in Sec. 251(d).