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OCA 86-0832  
17 March 1986

MEMORANDUM FOR: See Addressees

FROM:

[Redacted]

Deputy Director for Legislation  
Office of Congressional Affairs

*100-13*

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SUBJECT: Intelligence Authorization Bill for FY-1987  
Transmission to Congress

1. For your information, attached please find a copy of the Intelligence Authorization Bill for Fiscal Year 1987 as approved by the Office of Management and Budget and transmitted to the Congress. The bill was transmitted on 17 March 1987 under cover of transmittal letters from the Director of Central Intelligence (copies attached). Copies were also provided to both intelligence oversight committees.

2. Should you have any questions, please feel free to contact this office at:

[Redacted]

Attachments:  
as stated

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Distribution:

Original - LEG/OCA/SUB - Intelligence Authorization  
1 - [ ] Signer  
1 - IC Staff [ ] STAT  
2 - IC Staff [ ]  
2 - NSC Staff (deGraffenreid/Thompson)  
1 - State (Levitt)  
1 - DoD (Hess)  
1 - DCA (Winchester)  
1 - DIA [ ] STAT  
2 - DIA [ ]  
1 - NSA [ ]  
1 - DoJ (Perkins)  
2 - FBI (Moschella/Moran)  
1 - SA/DCI  
1 - SA/DCCI  
1 - EXDIR  
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1 - DDI  
1 - DDO  
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1 - Comptroller  
1 - OCA Chrono  
LEG/OCA: [ ] (17 March 1986) STAT

A BILL

To authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1987".

TITLE I - INTELLIGENCE ACTIVITIES

Authorization of Appropriations

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1987 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

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

Classified Schedule of Authorizations

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1987, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Committee of Conference to accompany ( ) of the Ninety-Ninth Congress. That Schedule of Authorizations shall be made available to the Committee on Appropriations of the Senate and House of

Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the Executive Branch.

#### Personnel Ceiling Adjustments

SEC. 103. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for fiscal year 1987 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

### TITLE II - INTELLIGENCE COMMUNITY STAFF

#### Authorization of Appropriations

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1987 the sum of \$22,938,000.00.

#### Authorization of Personnel End Strength

SEC. 202.(a) The Intelligence Community Staff is authorized two hundred and forty six full-time personnel as of September 30, 1987. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1987, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1987, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee or

member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

Intelligence Community Staff Administered  
in Same Manner as Central Intelligence Agency

SEC. 203. During fiscal year 1987, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III - CENTRAL INTELLIGENCE AGENCY  
RETIREMENT AND DISABILITY SYSTEM

Authorization of Appropriations

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1987 the sum of \$125,800,000.00.

TITLE IV - ADMINISTRATIVE PROVISIONS RELATED  
TO INTELLIGENCE AGENCIES

Classified Record Destruction Schedules

SEC. 401. Section 3203a of Title 44, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) The requirement in subsection (a) of this section that the Archivist provide notice in the Federal Register of the list and schedule of records proposed for disposal shall not apply to those lists and schedules that are properly classified pursuant to Executive Order 12356, or its successor order."

Interlocutory Appeal Authority

SEC. 402. The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding after Section 102a the following new section:

"SEC. 102b. In any civil action, suit, or proceeding in which the United States or any officer, employee or agent thereof is a party, or in which the United States has an interest, an interlocutory appeal may be taken as of right from a decision of any court of the United States, or a judge thereof, on any evidentiary or discovery matters, or potentially dispositive motions, if the Director of Central Intelligence, in prior consultation with the Attorney General, makes a written finding that an evidentiary or discovery matter will have an adverse effect on national security. This finding shall be transmitted to the Attorney General. In such cases, appeal may be taken upon application of the Attorney General to the appropriate courts of appeals, which shall have jurisdiction of appeals under this provision, except where direct review may be had in the Supreme Court. A stay of all proceedings shall be granted pending disposition of the appeals."

#### Protection of Agency Activities

SEC. 403. (a) The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended by adding at the end of Section 16 the following new section:

"SEC. 17. In its discretion, the Agency may, on the grounds of prior or current alcohol or drug abuse, deny to or remove from any individual access to classified information; refuse to hire any applicant for Agency employment; and terminate, suspend, or place limitations or conditions on the continued employment of any Agency employee, notwithstanding any other provisions of law."

(b) The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by redesignating section 2 as section 2(a), and by adding at the end thereof the following new subsection:

"(b) The Secretary of Defense (or his designee for the purpose) may, in his discretion, on the grounds of prior or current alcohol or drug abuse, deny to or remove from any individual access to classified information; refuse to hire any applicant for Agency employment; and terminate, suspend, or place limitations or conditions on the continued employment of any Agency employee, notwithstanding any other provisions of law."

(c) Section 1604 of chapter 83 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) The Secretary of Defense (or his designee for the purpose) may, in his discretion, on the grounds of prior or

current alcohol or drug abuse, deny to or remove from any civilian officer or employee of the Defense Intelligence Agency access to classified information; refuse to hire any applicant for employment with the Defense Intelligence Agency; and terminate, suspend, or place limitations or conditions on the continued employment of any Defense Intelligence employee notwithstanding any other provisions of law."

TITLE V - SUPPORT FOR DEFENSE INTELLIGENCE  
COLLECTION ACTIVITIES

SEC. 501. (a) Subtitle A of Title 10, United States Code, is amended by adding the following new chapter after Chapter 18:

"CHAPTER 19 - SUPPORT FOR INTELLIGENCE

SEC.

- 391. Purpose of this chapter.
- 392. Definition.
- 393. Authority to conduct commercial cover.
- 394. Authority to acquire logistic support, supplies, and services.
- 395. Oversight.
- 396. General Provisions.

"SEC. 391. Purpose of this chapter.

The purpose of this chapter is to provide statutory authority for the Secretary of Defense or the Secretaries of the Military Departments to conduct support activities necessary for authorized and appropriately coordinated intelligence collection activities of the Department of Defense.

"SEC. 392. Definition.

a. "Intelligence collection activities" means the collection of foreign intelligence or counterintelligence information by intelligence components of the Department of Defense.

b. "Intelligence support activities" means those activities described in sections 393 and 394, below.

c. "Commercial cover" means a business entity that is established solely to conceal the role of an intelligence component of the Department of Defense as it performs intelligence collection activities.



"SEC. 393. Authority to conduct commercial cover.

a. "The Secretary of Defense or the Secretaries of the Military Departments, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate, may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support intelligence collection activities of the Department of Defense, as defined herein. Such commercial entities may be established only upon written certification by the Secretary concerned that commercial cover is necessary to the conduct of authorized intelligence collection activities.

b. "The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. To this end, laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment and government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Secretary concerned or his designee for the purpose that the application of such laws would risk the compromise of commercial cover.

c. "The Secretary of Defense or the Secretaries of the Military Departments, or their designees, are authorized to deposit and withdraw funds appropriated for the Department of Defense used to conduct commercial cover and funds generated by the business entities authorized by this section in banks or other financial institutions.

d. "Funds generated by such business entities may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

e. "Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under the provisions of this section, the funds, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

"SEC. 394. Authority to acquire logistic support, supplies, and services.

a. "The Secretary of Defense or the Secretaries of the Military Departments, or their designees, may acquire any goods, services, property, buildings, facilities, space, insurance, licenses and any equipment necessary in order to establish or maintain a commercial cover.

b. "Acquisitions made under the provisions of this section are to be made utilizing procedures consistent with prevailing commercial practice so long as such practices are not inconsistent with the purposes of the commercial cover. To this end, laws applicable to federal acquisitions, federal appropriations, federal property management, and federal employment shall not apply where the application of such laws would risk compromise of the commercial cover.

"SEC. 395. General Provisions.

a. "The Secretary of Defense shall promulgate regulations to ensure oversight, operational effectiveness, and accountability of the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

b. "The Secretary of Defense or Secretaries of the Military Departments shall ensure that elements of the Department of Defense that undertake intelligence support activities pursuant to this chapter conduct an annual review and audit of such support activities.

c. "Intelligence support activities authorized under this chapter shall be protected pursuant to 50 U.S.C. 403(d)(3).

(b) The table of chapters at the beginning of subtitle A of such title and at the beginning of Part I of such subtitle are each amended by inserting after the item relating to chapter 18 the following new item:

"19. Support for Intelligence.....391".

TITLE VI - ENHANCED FBI COUNTERINTELLIGENCE  
CAPABILITIES

Improved Access to Financial Records in Connection  
with Counterintelligence Investigations

SEC. 601. Subsection 1114(a) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414) is amended by adding at the end of that subsection the following new paragraph:

"(a)(5) Notwithstanding any provisions of federal, state, local or foreign law to the contrary, a financial institution, or officer, employee, or agent of a financial institution, shall provide access to, and copies of, financial records of a customer that are responsive to a request made by a Government authority authorized to conduct foreign intelligence or counterintelligence activities, for purposes of conducting such activities.

Access to Telephone Toll Records

SEC. 602. (a) Chapter 33 of title 28 is amended by adding at the end thereof the following new section:

"SEC. 538. Access to Telephone Toll Records

(a) Notwithstanding any provisions of federal, state, or local law to the contrary, upon receipt of a certification signed by the Director of the Federal Bureau of Investigation or a supervisory official of a rank designated by the Director, that the Federal Bureau of Investigation is conducting a foreign counterintelligence investigation in accordance with applicable guidelines established by the Attorney General of the United States, a communications common carrier shall produce requested telephone subscriber information and toll billing record information.

(b) Notwithstanding any provisions of federal, state or local law, at the request of another agency within the Intelligence Community, as defined in Executive Order 12333, or successor orders, which request meets the standards contained in the guidelines referred to in subsection (a), the Federal Bureau of Investigation is authorized to request telephone toll record information when the information is relevant to the intelligence responsibility of such agency, and a communications common carrier shall produce the requested telephone subscriber information and toll billing record information.

(c) No officer, employee, or agent of the communications common carrier shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to the subscriber information and/or toll billing record information.

(d) The Federal Bureau of Investigation is authorized to disseminate information obtained pursuant to this section to other agencies within the Intelligence Community, as defined in Executive Order 12333 or successor orders, when the information is relevant to foreign counterintelligence responsibilities of such agency."

(b) The table of contents for chapter 33 of title 28, United States Code is amended by adding at the end thereof the following:

"538. Access to Telephone Toll Records."

Access to State and Local  
Criminal Records

SEC. 603. (a) Section 9101 of title 5, United States Code is amended:

(1) in paragraph (1) of subsection (b) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency;"

(2) in subparagraph (3)(A) of subsection (b) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency;"

(3) in subparagraph (3)(B) of subsection (b) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency;" and

(4) in subsection (c) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency."

(b) Section 803(a) of title 8 of the Intelligence Authorization Act for Fiscal Year 1986 is amended by striking out "and" after the "the Office of Personnel Management" and by inserting ", and the Federal Bureau of Investigation" after "the Central Intelligence Agency".

(c) The amendments made by this Section of this Act shall become effective with respect to any inquiry which begins after the date of enactment of this Act conducted by the Federal Bureau of Investigation for purposes specified in paragraph (b)(1) of section 9101 of Title 5.

#### TITLE VII - DOD ADMINISTRATIVE AND PERSONNEL IMPROVEMENTS

##### Extension of Secretary's Termination Authority for DIA Civilian Personnel

SEC. 701. Paragraph 1604(e)(1) of chapter 83 of title 10, United States Code, is amended by striking out "1985 and 1986" and inserting in lieu thereof "1987 and 1988".

##### Clarification of Defense Mapping Agency Authorities

SEC. 702.(a) Chapter 167 of title 10, United States Code is amended by adding at the end thereof the following:

" 2795. Exchange of Mapping, Charting and Geodesy Data with Foreign Nations.

"The Secretary of Defense may subject to the requirements of Section 112b of Title I of the United States Code and the regulations promulgated thereunder (22 CFP Part 181), and under such additional regulations as are deemed appropriate, authorize the Defense Mapping Agency to exchange or furnish mapping, charting and geodetic data, supplies or services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data."

(b) The table of contents of Chapter 167 of Title 10, United States Code is amended by adding at the end thereof:

" 2795. Exchange of Mapping, Charting and Geodesy Data with Foreign Nations."

Medical Evacuation Authority for DIA Civilian  
Employees Stationed Overseas

SEC. 703. Subsection 1605(a) of Chapter 83 of title 10, United States Code, is amended by inserting "(5)" after "paragraphs (2), (3), (4)" and after "22 U.S.C. 4081 (2), (3), (4)".

"Recycling" of Certain Proceeds  
from DoD Counterintelligence Operations

SEC. 704 (a). The Secretary of Defense may authorize without regard to the provisions of Section 3302 of title 31, United States Code, use of proceeds from counterintelligence operations conducted by components of the Military Departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, if the use of appropriated funds to meet such expenses would not be practicable.

(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management and disposition of proceeds from counterintelligence operations conducted by components of the Military Departments, including effective internal systems of accounting and administrative controls.

TITLE VIII - GENERAL PROVISIONS

Increase in Employee Compensation  
and Benefits Authorized by Law

SEC. 801. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1987

SECTION-BY-SECTION ANALYSIS  
AND EXPLANATION

TITLE I

INTELLIGENCE ACTIVITIES

Section 101 lists the departments, agencies, and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for fiscal year 1987.

Section 102 makes clear that details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings covered under this title for fiscal year 1987 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103 authorizes the Director of Central Intelligence in fiscal year 1987 to expand the personnel ceilings applicable to the components of the Intelligence Community under Sections 102 and 202 by an amount not to exceed 2 percent of the total of the ceilings applicable under these sections. The Director may exercise this authority only when necessary to the performance of important intelligence functions or to the maintenance of a stable personnel force, and any exercise of this authority must be reported to the two intelligence committees of the Congress.

TITLE II

INTELLIGENCE COMMUNITY STAFF

Section 201 authorizes appropriations in the amount of \$22,938,000.00 for the staffing and administration of the Intelligence Community Staff.

Section 202 provides details concerning the number and composition of Intelligence Community Staff personnel.

Subsection (a) authorizes full-time personnel for the Intelligence Community Staff for fiscal year 1987, and provides that personnel of the Intelligence Community Staff may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (b) requires that detailed employees be selected so as to provide appropriate representation from the various departments and agencies engaged in intelligence and intelligence-related activities.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations.

Section 203 provides that the Director of Central Intelligence shall utilize existing statutory authority to manage the activities and to pay the personnel of the Intelligence Community Staff. This language reaffirms the statutory authority of the Director of Central Intelligence and clarifies the legal status of the Intelligence Community Staff. In the case of detailed personnel, it is understood that the authority of the Director of Central Intelligence to discharge personnel extends only to discharge from service at the Intelligence Community Staff and not from federal employment or military service.

### TITLE III

#### CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 301 authorizes fiscal year 1987 appropriations in the amount of \$125,800,000.00 for the Central Intelligence Agency Retirement and Disability Fund.

### TITLE IV

#### ADMINISTRATIVE PROVISIONS RELATED TO INTELLIGENCE AGENCIES

Section 401 exempts federal agencies that submit classified record destruction schedules from the requirement contained in §3303a of Title 44, United States Code, that the Archivist may approve records disposal requests only after publication of notice in the Federal Register and an opportunity for interested persons to submit comments thereon.



The requirement that the Archivist publish record disposal requests in the Federal Register was added by §204 of the National Archives and Records Administration Act of 1984. By requiring that the Archivist provide notice in the Federal Register, the public would be given an opportunity to obtain and comment on the the actual schedule of records proposed for destruction. While the purpose of the provision was to give the public a role in determining what records should be destroyed, the legislative history makes clear that Congress did "not intend . . . for such public notice to be a paperwork burden for any affected parties or to unreasonably delay the disposal of such records." H. Conf. Rpt. No 1124, 98th Cong., 2d Sess., 29-30, reprinted in 1984 U.S. Code Cong. & Ad. News 3904-3905.

Unfortunately, the requirement for publication in the Federal Register has become a paperwork burden for CIA and NSA that has unreasonably delayed the disposal of records. The problem arises because the CIA and NSA record control schedules submitted to the National Archives and Records Administration (NARA) are classified confidential or are protected under the National Security Agency Act of 1959. NARA has therefore decided that the Federal Register notice concerning classified records schedules will be limited to the following information:

- a) the identity of the requesting agency;
- b) the NARA job number assigned to the schedule; and
- c) the reason the schedule is excluded from public disclosure.

Because the CIA and NSA record destruction schedules are classified or protected by statute and not accessible to the public, the statutory requirement that the Archivist publish notice of them in the Federal Register so as to provide the public an opportunity to obtain them makes absolutely no sense. Furthermore, this requirement unreasonably delays approval by the Archivist of NSA and CIA record destruction schedules since the public is given 60 days to comment on the notice in the Federal Register. Exempting those agencies that submit classified record destruction schedules from the provision requiring notice in the Federal Register of requests to destroy records would expedite the process of approval of requests to destroy records and not deprive the public of any information they would otherwise be entitled to receive. The unclassified record disposition schedules from any agency are not exempt from the publication requirements.

Section 402 amends the National Security Act of 1947 to permit an interlocutory appeal by the United States from any decision of a United States court or a judge thereof on any evidentiary ruling or dispositive motion when the Director of Central Intelligence certifies that the decision being appealed will have an adverse impact on the national security. Recently,

the United States has encountered significant problems in attempting to perfect interlocutory appeals of several court decisions. The hallmark of these cases is an attempt by the plaintiffs to force the United States to submit to civil discovery and a trial on the merits. The Agency has attempted to narrowly focus the litigation on the pure legal principles involved and not on the facts of the case, which, in all likelihood, will be in dispute. Thus, in such cases, the Agency has filed motions to dismiss or for summary judgment which deal only with matters of law. In those cases where our motion has been denied, we must choose between litigating the case on its merits, or seeking an interlocutory appeal of the order denying our motion. Litigating the case on its merits is not an attractive option because these cases frequently involve the disclosure of classified information in a public forum. Furthermore, in these cases the Agency has taken the position that as a matter of law, the Director's authority to take certain personnel action is not subject to legal challenge and, by submitting to discovery and trial on the merits, our legal right not to be tried would be fatally undermined.

Given the difficulty in litigating these cases on the merits, the Agency has attempted to obtain an interlocutory appeal of the court decision denying our motion to dismiss. One way to obtain an interlocutory appeal is if the lower court certifies that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. The Court of Appeals may then, in its discretion, permit an appeal to be taken from such order. See 28 U.S.C. §1292(b). A second method for obtaining an interlocutory appeal is by arguing that the decision of the lower court are collateral orders appealable under the doctrine of Cohen v. Beneficial Loan Corporation, 337 U.S. 541 (1949). That case provides for an interlocutory appeal if it can be shown that the order of the lower court was a final disposition of a claimed right which is not an ingredient of the cause of action and too independent of the cause itself to require that appellate consideration be deferred until the case is adjudicated. The Agency has attempted to employ this doctrine and the certification procedure in several cases to obtain an interlocutory appeal. In one case, the Court of Appeals ruled that an order denying a motion made by the Agency to dismiss a complaint challenging the Director's statutory authority to terminate employees was not a collateral order under the Cohen doctrine. In another case, the likelihood of obtaining an interlocutory appeal under the Cohen doctrine or the certification process was so small that a decision was made not to attempt to proceed with an interlocutory appeal.

Faced with the possibility of disclosure of classified information in a public forum through litigation of the underlying grievance and an inability to obtain an interlocutory appeal of the lower court order denying our motion to dismiss, the Agency has settled such cases for hundreds of thousands of dollars. Clearly, the U.S. Government should not be put into a position of being forced to settle cases to avoid the disclosure of classified information, particularly where there is a likelihood that an appellate court would ultimately vindicate the Director's authorities after the case had been litigated on the merits in the lower court.

These problems can be resolved if the United States can obtain the right to undertake an interlocutory appeal upon a certification that the national security justifies such an appeal. It is not intended, however, that the right established by this section in any way affects the role of the Attorney General in managing the litigation caseload of the United States. Additional information regarding this provision, which cannot be provided in a public document, has been previously provided to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence.

Section 403 amends the Central Intelligence Agency Act of 1949, the National Security Agency Act of 1959, and Section 1604 of Chapter 83 of title 10, United States Code, to make clear that CIA, NSA and DIA can continue to deal with security problems in the area of drug and alcohol abuse without regard to the provisions of any other law, rule or regulation. Recent court decisions, e.g., Whitlock v. Donovan, Civil Action No. 83-3398 (D.D.C. 1984), and rulings by both the Equal Employment Opportunity Commission and the Merit Systems Protection Board have suggested that there will be increasing emphasis on treating alcoholism and alcohol abuse as a handicap protected under the provisions of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 701 et seq.) which outlaws handicap discrimination. See Comprehensive Alcohol Abuse and Alcohol Prevention Treatment and Rehabilitation Act of 1970; see also Ruzek v. GSA, 7 MSPB 307. By implication there will likely be a similar emphasis on treatment of drug abuse as a handicap with the same protection (Drug Abuse Office and Treatment Act of 1972 and 43 Op. Atty. Gen. 12). This may very well result in an increased prospect of litigation whenever CIA, NSA or DIA determine that drug or alcohol abuse requires the denial or revocation of security approvals, or the denial or loss of employment. Not only is there concern about the prospects of having to litigate these decisions, but there also is a likelihood that CIA, NSA and DIA will be forced more and more

to make accommodations to take into account these "handicaps," regardless of the security consequences of continuing to employ or clear such persons. In order to avoid these additional administrative and litigation problems, which could substantially impair the ability of CIA, NSA and DIA to carry out their national security missions and functions, this amendment would clearly authorize CIA, NSA and DIA to deal with the security implications of alcohol and drug abuse in the same manner as in the past. Additional information regarding this provision, which cannot be provided in a public document, has been previously given to the Committees.

## TITLE V

### SUPPORT FOR DEFENSE INTELLIGENCE COLLECTION ACTIVITIES

Section 501 adds a new chapter 19 to subtitle A of Title 10, United States Code, authorizing the establishment and conduct of corporations or other business entities to provide support for Department of Defense undercover intelligence collection activities.

Proposed subsection 391 states that the purpose of proposed chapter 19 is to provide the SECDEF and the Secretaries of the Military Departments to establish the statutory authority commercial covers to support intelligence collection activities.

Proposed subsection 392a defines a new term "intelligence collection activities". The use of a new term rather than the redefining of the term "intelligence activities" precludes the development of two definitions (E.O. 12333 & statutory) for the same term.

Proposed subsection 392b defines the term "intelligence support activities" to mean the establishment, acquisition and conduct of commercial cover systems and the acquisition of logistical support thereto as described in subsections 393 and 394.

Proposed subsection 392c defines a new term, "commercial cover", which is used throughout the proposed Chapter 19 of this title.

Proposed subsection 393a authorizes the Secretary of Defense or the Secretaries of the Military Departments to establish and conduct commercial covers as commercial entities. In making specific reference to consultation with the Director of Central Intelligence and the Director of the

Federal Bureau of Investigation, this subsection is not intended in any way to alter or derogate from the responsibilities and authority of the Chief of Mission to a foreign country under 22 U.S.C. 3927 for direction, coordination, and supervision of all U.S. Government employees in that country (except for employees under the command of a U.S. area military commander) or from established procedures for coordination with the Secretary of State in the conduct of clandestine activities. Subsection 393a further states that the establishment of a commercial cover requires a finding in the form of a written certification by the Secretary responsible for the commercial entity that the commercial cover is necessary to the conduct of authorized intelligence collection activities.

Proposed subsection 393b requires that the establishment and operation of such commercial covers be in accordance with prevailing commercial practice. Federal statutes that regulate the establishment and operation of commercial and industrial type government activities shall not apply to the establishment and operation of commercial covers conducted pursuant to this section when there is a written certification by the Secretary concerned or his designee that compliance with such statutes would risk compromise of the commercial cover. It is not intended that the authorities contained in this section will relieve the Department of Defense from any requirements of applicable laws. Any exemptions apply only to the operations of the commercial cover. Commercial covers must of necessity conform to standard commercial practices. Compliance with statutory requirements that govern routine government procurement and financial transactions would not conform with such prevailing commercial practices and would flag a commercial cover entity as being connected with the United States Government, thus risking the security of the commercial cover and the underlying intelligence collection activities. In the past, Congress has exempted the FBI from certain procurement and financial requirements, e.g., the Anti-Deficiency Act, 31 U.S.C. 1341, and the Department of Defense is proposing that similar exemptions be authorized for intelligence support activities. It is virtually impossible to foresee and list by citation every statutory requirement that may be incompatible with intelligence support activities. Therefore, subsection 393b describes the exemptions categorically in order to capture and embody all the provisions that would risk compromising the commercial cover. Such statutes encompass laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment, and government corporations. These categories of law are defined below.

"Federal acquisitions" means acquiring real estate, goods or services for the United States Government. These activities are principally governed by Titles 41 and 10 of the United States Code. Title 41 requirements that may be incompatible with intelligence support activities include:

41 U.S.C. 5 which establishes the requirement to advertise proposed purchases and proposed contracts for supplies or services.

41 U.S.C. 35 which requires the inclusion of contract provisions such as the Walsh-Healey Act representations and stipulations.

41 U.S.C. 46 and 48c which establish the requirement to purchase blind-made products.

41 U.S.C. 255 which limits advance payments to contractors.

41 U.S.C. 253 which requires full and open competition.

Title 10 requirements that may be incompatible with intelligence support activities include:

10 U.S.C. 2207 which prohibits contracting unless the contract contains specific provisions.

10 U.S.C. 2276 which makes the contractor's books subject to Government audit.

10 U.S.C. 2301 which prohibits cost-plus-a-percentage-of-cost contracts. This section also subjects a commercial cover to small business set-asides. This may conflict with prevailing commercial practice.

10 U.S.C. 2304 which limits the use of negotiated procurements. Formal advertisement (sealed bids) may not be consistent with prevailing commercial practice.

10 U.S.C. 2306 which places restrictions on the kinds of contracting that may be used. These restrictions may conflict with prevailing commercial practice. This section also creates a right to examine all books, records, etc. of the contractor or subcontractor. This may also identify the intelligence support activity as a U.S. Government entity.

10 U.S.C. 2307 which prohibits certain advance payments for property and services. This may conflict with prevailing commercial practice.

10 U.S.C. 2313 which creates a right to inspect plants and audit books of certain contractors and subcontractors. Such an inspection would identify the contracting agency as a United States Government entity.

10 U.S.C. 2360 which creates a right for students contracting with the Government to be entitled to be considered as employees which may identify the contracting agency as a United States Government entity.

10 U.S.C. 2381 which requires certain measures for non-negotiated procurements which will identify the contracting agency as a United States Government entity (surety bonds, charges, etc.).

10 U.S.C. 2384 which requires supplies furnished to a military department to be uniquely marked, which will identify the contracting agency as a United States Government entity.

10 U.S.C. 2631 which restricts transportation of supplies to U.S. Flag Vessels. This may conflict with prevailing commercial practice.

"Federal property management" means the control and use of federal real and personal property. These activities are principally governed by Titles 40 and 10 of the United States Code. Restrictions that may be incompatible with commercial covers include:

40 U.S.C. 34 which limits the leasing of space in the District of Columbia.

40 U.S.C. 33a which establishes restrictions on construction loans for office buildings by Government corporations.

40 U.S.C. 129 which establishes limits on a Government corporation's leasing of buildings in addition to the limitation on rental rates and prohibits the inclusion, in any lease, of any provision regarding the repair of real property.

10 U.S.C. 2662 which requires reporting of certain real estate transactions to Congress 30 days in advance of the transaction.

10 U.S.C. 2672 restricts agency authority to acquire an interest in land to \$100,000 or less.

10 U.S.C. 2676 limits authority to acquire land unless acquisition is expressly authorized by law.

"Federal employment" means restrictions, rights, duties, and entitlements flowing from Part III of Title 5 of the United States Code. The intent of this section is to exclude from the application of Title 5, United States Code, employees of the commercial cover who are not federal employees occupying positions within the commercial cover. The restrictions, rights, duties, and entitlements that may be incompatible with prevailing commercial practices include:

5 U.S.C. 3101 et seq. which limits the authority to appoint employees.

5 U.S.C. 5101 et seq. which establishes classes of employees and prescribes levels of pay for those classes.

5 U.S.C. 4101 et seq. which establishes training programs.

5 U.S.C. 4301 et seq. which establishes a performance rating system for employees, including minimum due process.

5 U.S.C. 6101 et seq. which establishes a leave and attendance system.

5 U.S.C. 7101 et seq. which establishes a system for adverse actions, including removal.

5 U.S.C. 8101 et seq. which provides for insurance and other entitlements.

"Government Corporations" means a corporation that is owned by the Federal Government. While commercial covers are not Government corporations in the classical sense, they nonetheless meet definitions set out in 31 U.S.C. 9101(1). Government corporations are principally governed by Title 31 of the United States Code. Requirements that pertain to Government corporations that may be incompatible with commercial covers include:

31 U.S.C. 9102 which requires that each corporation established or acquired by an agency be specifically authorized by Congress.

31 U.S.C. 9103 which requires an annual budget submission to Congress.

31 U.S.C. 9107 which requires Comptroller General's approval prior to the consolidation of a corporation's cash.



31 U.S.C. 9108 which limits the obligations that may be issued by a Government corporation.

It is intended that commercial covers utilize these exemptions only to the extent that it is necessary, and that they be conducted in a manner that is generally consistent with ordinary commercial practice. Adequate safeguards are provided in the legislation and the Department's own procedures will further ensure the proper application of the exemptions and the appropriate use of funds.

Subsection 393c authorizes the deposit and withdrawal of appropriated and generated funds in banks and other financial institutions.

Subsection 393d requires that all proceeds generated by a commercial cover that are no longer necessary to offset necessary and reasonable expenses of the commercial cover, revert to the U.S. Treasury as miscellaneous receipts.

Subsection 393e requires that funds resulting from a final disposition of a commercial cover, after all obligations have been met, shall be deposited in the United States Treasury as miscellaneous receipts.

Proposed subsection 394a grants to the Secretary of Defense or the Secretaries of the Military Departments, or their designees, the authority to acquire necessary services, personalty, fixtures, and realty in order to support a commercial cover.

Proposed subsection 394b requires that acquisitions made pursuant to subsection 394a utilize procedures that are consistent with prevailing commercial practice. The subsection further provides that such acquisitions shall be exempt from laws governing federal acquisitions, federal appropriations, federal property management, and federal employment where the application of such laws would risk the compromise of the commercial cover. It is not intended that the authorities contained in this section will relieve the Department of Defense from any requirements of applicable laws. Any exemptions apply only to the operations of the commercial cover. For a discussion of these laws see the analysis above pertaining to proposed subsection 393b.

Proposed section 395a requires the Secretary of Defense to promulgate regulations to ensure oversight, operational effectiveness, and accountability of all intelligence support activities undertaken pursuant to this chapter.

Proposed subsection 395b requires the Secretary of Defense, or the Secretaries of the Military Departments to ensure that an annual review and audit is conducted of each intelligence support activity.

Proposed subsection 395c makes it clear that all intelligence support activities undertaken pursuant to this chapter are to be protected from unauthorized disclosure as set forth in 50 U.S.C. 403(d) (3).

## TITLE VI

### ENHANCED FBI COUNTERINTELLIGENCE CAPABILITIES

Section 601 would amend the Right to Financial Privacy Act of 1978 (12 U.S.C. §3401 et. seq.) by making certain of the special procedures set forth in Section 3414 mandatory. Section 3414 currently provides that a Government authority authorized to conduct foreign counterintelligence investigations may obtain financial records from a financial institution by submitting a certification signed by the supervisory official of a rank designated by the head of the Government authority. However, Section 3414 does not compel the financial institution to disclose the requested records. There have been instances wherein financial institutions have declined to provide records requested pursuant to Section 3414. Officials of such institutions have stated that they would produce the requested records only in response to a subpoena. Although the current number of refusals is not high, certain major banks have refused to comply with requests for financial data. Knowledge that these financial institutions will not comply with requests for financial data has in some cases deterred the FBI from making the requests. Thus, as long as Section 3414 is retained in its current form, the FBI and other government agencies may face the obstacle of a recalcitrant financial institution in a foreign counterintelligence investigation. Enactment of this section will ensure that government agencies involved in foreign counterintelligence investigations will have access to financial data relevant to the particular matter being investigated. Congress will continue to receive notice concerning use of this authority through existing reporting provisions as set forth in 12 U.S.C. 3421.

Section 602 provides access by the FBI to telephone subscriber information and toll billing record information from a communications common carrier, either at its own behest or on behalf of other intelligence agencies for authorized intelligence purposes. The need for this provision has its

roots in the difficulties that the FBI encounters in certain areas of the country in obtaining telephone toll record information pursuant to National Security Letters (NSL). Pursuant to an agreement reached approximately ten years ago between the Department of Justice and AT&T, NSL's are utilized in lieu of subpoenas to obtain telephone toll record information in foreign counterintelligence investigations. However, State privacy statutes, as well as court and agency decisions, are causing certain companies, particularly in California, to refuse to honor NSLs. Indeed, decisions of the California Public Utility Commission (PUC) have resulted in no companies in California honoring NSLs. This section would make it mandatory for a communications common carrier to produce requested telephone subscriber information pursuant to an NSL signed by the Director of FBI or a supervisory official designated by him. This section also permits other agencies of the Intelligence Community to request that the FBI obtain telephone toll records when such requests are made in accordance with applicable guidelines established by the Attorney General for conducting counterintelligence investigations. Finally, the section prohibits the disclosure of a request for toll record information and authorizes dissemination of information obtained pursuant to this section to other agencies within the Intelligence Community.

Section 603 would allow access for the FBI to state and local criminal records for national security purposes similar to the relief that was granted to the CIA, DOD, and OPM in the Intelligence Authorization Act for FY 86. That Act does not include the FBI in its provisions, despite the longstanding responsibilities of the FBI in the conduct of background investigations. However, the FBI has also faced difficulties in recent years in obtaining criminal records information from state and local agencies for purposes of conducting background investigations, primarily because of state and local legislation triggered by, and similar to, the Privacy Act.

An example of the difficulty in obtaining criminal history record information for purposes of conducting a background investigation can be found in California. The FBI's California offices have been precluded from access to the California law enforcement telecommunication criminal justice information system for the purpose of conducting background investigations because the California Department of Justice has interpreted the State's Freedom of Information/Privacy Acts, which prohibit use of information developed by law enforcement agencies for other than law enforcement purposes, to exclude background investigations from the realm of law enforcement purposes. Even with a release from the applicant, some information on an applicant has been withheld.

Other states have similar laws restricting the use of criminal record information for employment purposes. To date these laws have not been interpreted to preclude FBI access to the records for the purpose of conducting background investigations. There is no guarantee, however, that these states may not someday take a different position. Because the FBI is decentralizing its record keeping practices and state and local authorities have become increasingly responsible for the maintenance and dissemination of their criminal records, a change in position by these states to deny the FBI these records could drastically reduce the ability of the FBI to obtain complete criminal record information for background investigations.

To address the current problems and potential concerns stated above, the FBI should be added to those agencies entitled under Section 9101 of Title 5, United States Code, to obtain access to state and local criminal history records. This will ensure that the FBI can adequately fulfill its responsibilities in conducting background investigations.

## TITLE VII

### DOD ADMINISTRATIVE AND PERSONNEL IMPROVEMENTS

Section 701 seeks to extend by two fiscal years the termination authority of the Secretary of Defense with respect to the employment of any civilian officer or employee of the Defense Intelligence Agency (DIA). Subsection 501(a) of the Intelligence Authorization Act for FY 85, P.L. 98-618, authorized the Secretary of Defense to exercise the above termination authority whenever such an action was considered by him to be in the best interests of the United States and he determined that the termination procedures otherwise authorized by law could not be "invoked in a manner consistent with the national security." As enacted, paragraph 1604(e)(1) of chapter 83 of title 10, United States Code, extended this authority to the Secretary of Defense for fiscal years 1985 and 1986. The regulations which were subsequently written to implement this authority have been finalized within DIA and they are now in the final stages of coordination within the Department of Defense. The extension of authority is being requested so as to allow DIA an opportunity to have two full fiscal years of experience under the implementing regulations. Then, as the end of the extended time period draws near, a determination can be made as to whether the termination authority should be modified and/or enacted into permanent authority.

Section 702 clarifies and makes permanent statutory authority for the Department of Defense, through the Defense Mapping Agency (DMA), to conduct mapping activities in foreign countries. Currently, DMA has 185 international executive agreements with 75 countries concerning the exchange, collection, and production of mapping data. Some of these agreements have been in existence since the early 1940's. Specifically, these agreements permit (1) the exchange of maps, charts and other geodesic information, (2) co-production and collection of mapping data, (3) loan of DMA equipment so that foreign mapping agencies can produce raw data more efficiently and accurately, (4) training in equipment use by DMA of foreign personnel, and (5) access to foreign countries.

DMA finds it necessary to deal with foreign map agencies to the extent that overhead systems cannot provide accurate cartographic data. To fill the gap, DMA will send a team to do what is required to map that area. However, the cost of sending U.S. personnel has been prohibitive; it is far less expensive to use local foreign mapping agencies. When local mapping personnel are used, the U.S. sends them the specialized equipment and provides the necessary training as set forth in the executive agreement.

Therefore, the United States saves a good deal of money by the use of foreign locals rather than sending United States persons to do the job. In the exchange, the United States gets significant raw mapping data as well as access to the territory of another sovereignty. Over the years this has been a low cost, reliable and convenient way for DMA to fulfill its mission. It should also be emphasized that in many instances this is the "only" way to get mapping data from foreign countries. In addition to the substantial savings in using local foreign personnel, it is estimated that the data and other materials provided to the United States through such agreements is valued in excess of \$80 million annually.

However, the authority of DMA to engage in such executive agreements with other countries has been called into question. Technically, DMA lacks explicit statutory authority to engage in these agreements. Currently it relies exclusively on executive Constitutional authority as the basis for such agreements. But changes in statutory law have introduced an element of uncertainty in DMA's reliance on Constitutional authority. P.L. 97-113 prohibits no-cost loan of defense (DMA) equipment. In addition, both the Arms Export Control Act and the Foreign Assistance Act require foreign governments to reimburse the Defense Department for any foreign training. Neither the cost avoidance of using foreign locals over United States personnel, nor the \$80 million valuation of data provided by foreign countries is calculated as

reimbursement. In combination these laws render DMA's exclusive reliance on the Constitution as the legal basis for these international executive agreements somewhat uncertain. To remedy this uncertainty, DMA seeks limited statutory authority to continue to exchange mapping data, supplies and services with foreign countries.

Section 703 provides DIA with authority to pay for necessary medical evacuations of DIA civilian employees stationed overseas. Section 501 of the Intelligence Authorization Act for FY84, P.L. 98-215, authorized allowances and benefits for certain employees of DIA stationed overseas comparable to those provided to officers and employees of the Foreign Service serving overseas. However, the authority to pay the costs or expenses incurred for a medical evacuation of a civilian employee when there is no suitable person or facility in the overseas locality to provide the necessary medical care was not included in the list of benefits provided by section 501. This authority was reenacted as Section 1605 of Title 10 by subsection (a) of Section 1302 of the Department of Defense Authorization Act, 1986, P.L. 99-145. This authority is not only currently available to Foreign Service officers and employees, but also to CIA and NSA civilian employees (see section 4 of the CIA Act of 1949, 50 U.S.C. 403(e) and paragraph 9(b)(1) of the National Security Agency Act of 1959, 50 U.S.C. 402 note, respectively). While it is fortunate that there is rarely the need to have such an authority, DIA has experienced necessary medical evacuations of its civilian employees stationed overseas. Should similar circumstances arise in the future, payment for medical evacuation of DIA civilian employees should be handled on the same basis as for other civilian intelligence and diplomatic employees similarly situated.

Section 704 would permit the use of proceeds from military counterintelligence operations to offset necessary and reasonable expenses incurred in such operations. The current law (31 U.S.C. 3302) can be interpreted to require that funds paid by a foreign counterintelligence service to a counterintelligence double agent must be deposited in the U.S. Treasury. However, the established practice by counterintelligence components of the U.S. military has been to recycle those funds and use them for double agent operations.

An opinion by the General Counsel of the Defense Department advises that the proceeds from double agent operations should be paid into the Treasury. Legislation is therefore required to make clear that money paid by foreign counterintelligence services to our military counterintelligence double agents can be used to defray reasonable and necessary operational expenses. Such usage is important to operational security, maintenance of agent bona fides, and for compensating double

agents for legitimate expenses associated with operational activity. Section 706 also will avoid having to use appropriated funds to pay operational expenses that have previously been defrayed by using money paid to double agents by foreign intelligence services.

Such an exemption from 31 U.S.C. 3302 was obtained by Defense counterintelligence components under section 701 of the Intelligence Authorization Act for FY 1986. Section 705 merely restates that provision.

#### TITLE VIII

#### GENERAL PROVISIONS

Section 801 authorizes the increase of appropriations authorized by the Act for salary, pay, retirement, and other benefits for federal employees as necessary for increases in such benefits authorized by law.

INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1967

CHANGES IN EXISTING LAW

NOTE: Where applicable, changes in existing law are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be struck is enclosed in brackets; new material is underscored.

TITLE I

INTELLIGENCE ACTIVITIES

Section 101: No substantive change.

Section 102: No substantive change.

Section 103: No substantive change from Section 103 of the fiscal year 1986 Act.

TITLE II

INTELLIGENCE COMMUNITY STAFF

Section 201: No substantive change.

Section 202: No substantive change.

Section 203: No substantive change.



TITLE III

CENTRAL INTELLIGENCE AGENCY  
RETIREMENT AND DISABILITY SYSTEM

Section 301: No substantive change.

TITLE IV

ADMINISTRATIVE PROVISIONS RELATED TO  
INTELLIGENCE AGENCIES

Section 401: Amends section 3303a of Title 44, United States Code, by adding at the end thereof the following new subsection:

(g) The requirement in subsection (a) of this section that the Archivist provide notice in the Federal Register of the list and schedule of records proposed for disposal shall not apply to those list and schedules that are properly classified pursuant to Executive Order 12356, or its successor order.

Section 402: Amends the National Security Act of 1947 (50 U.S.C. 401 et seq.) by adding at the end of section 102a the following new section:

SEC. 102b. In any civil action, suit, or proceeding in which the United States or any officer, employee or agent thereof is a party, or in which the United States has an interest, an interlocutory appeal may be taken as of right from a decision of any court of the United States, or a judge thereof, on any evidentiary or discovery matters, or potentially dispositive motions, if the Director of Central Intelligence in prior consultation with the Attorney General, makes a written finding that an evidentiary or discovery matter will have an adverse effect on the national security. This finding shall be transmitted to the Attorney General. In such cases, appeal may be taken upon application of the Attorney General to the appropriate courts of appeals, which shall have jurisdiction of appeals under this provision, except where direct review may be had in the Supreme Court. A stay of all proceedings shall be granted pending disposition of the appeals.

Section 403: (a) Amends the Central Intelligence Act of 1949 (50 U.S.C. 403a et seq.) by adding at the end of Section 15 the following new section:

SEC. 16. In its discretion, the Agency may, on the grounds of prior or current alcohol or drug abuse, deny to or remove from any individual access to classified information, refuse to hire any applicant for Agency employment, and terminate, suspend, or place limitations or conditions on the continued employment of any Agency employee, notwithstanding any other provisions of law.

(b) Amends the National Security Agency Act of 1959 (50 U.S.C. 402 note):

1) by redesignating section 2 as section 2(a) and

2) by adding at the end thereof the following new subsection:

b) The Secretary of Defense (Or his designee for the purpose) may, in his discretion, on the grounds of prior or current alcohol or drug abuse, deny to or remove from any individual access to classified information, refuse to hire any applicant for Agency employment, and terminate, suspend, or place limitations or conditions on the continued employment of any Agency employee, notwithstanding any other provisions of law.

(c) Section 1604 of chapter 83 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

(f) The Secretary of Defense (or his designee for the purpose) may, in his discretion, on the grounds of prior or current alcohol or drug abuse, deny to or remove from any civilian officer or employee of the Defense Intelligence Agency access to classified information; refuse to hire any applicant for employment with the Defense Intelligence Agency; and terminate, suspend, or place limitations or conditions on the continued employment of any Defense Intelligence employee notwithstanding any other provisions of law.

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TITLE V

SUPPORT FOR DEFENSE INTELLIGENCE COLLECTION ACTIVITIES

Section 501: Amends subtitle(a) of Title 10, United States Code, by adding the following new chapter after Chapter 18:

CHAPTER 19 - SUPPORT FOR INTELLIGENCE

SEC.

391. Purpose of this chapter.

392. Definition.

393. Authority to conduct commercial cover.

394. Authority to acquire logistic support, supplies, and services.

395. Oversight.

396. General Provisions.

SEC. 391. Purpose of this chapter.

The purpose of this chapter is to provide clear authority for the Secretary of Defense or the Secretaries of the Military Departments to conduct support activities necessary for authorized and appropriately coordinated intelligence collection activities of the Department of Defense.

SEC. 392. Definition.

a. "Intelligence collection activities" means the collection of foreign intelligence or counterintelligence information by intelligence components of the Department of Defense.

b. "Intelligence support activities" means those activities described in sections 393 and 394, below.

c. "Commercial cover" means a business entity that is established solely to conceal the role of an intelligence component of the Department of Defense as it performs intelligence collection activities.

SEC. 393. Authority to conduct commercial cover.

a. The Secretary of Defense or the Secretaries of the Military Departments, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation as appropriate, may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business

entities as commercial covers to support intelligence collection activities of the Department of Defense, as defined herein. Such commercial entities may be established only upon written certification by the Secretary concerned that commercial cover is necessary to the conduct of authorized intelligence collection activities.

b. The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. To this end, laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment and government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Secretary concerned or his designee for the purpose that the application of such laws would risk the compromise of commercial cover.

c. The Secretary of Defense or the Secretaries of the Military Departments, or their designees, are authorized to deposit and withdraw funds appropriated for the Department of Defense used to conduct commercial cover and funds generated by the business entities authorized by this section in banks or other financial institutions.

d. Funds generated by such business entities may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

e. Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under the provisions of this section, the funds, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

SEC. 394. Authority to acquire logistic support, supplies, and services.

a. The Secretary of Defense or the Secretaries of the Military Departments, or their designees, may acquire any goods, services, property, buildings, facilities, space, insurance, licenses and any equipment necessary in order to establish or maintain a commercial cover.

b. Acquisitions made under the provisions of this section are to be made utilizing procedures consistent with prevailing commercial practice so long as such practices are not inconsistent with the purposes of the commercial cover. To this end, laws applicable to federal acquisitions, federal appropriations, federal property management, and federal employment shall not apply where the application of such laws would risk compromise of the commercial cover.

SEC. 395. General Provisions.

a. The Secretary of Defense shall promulgate regulations to ensure oversight, operational effectiveness, and accountability of the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

b. The Secretary of Defense, or Secretaries of the Military Departments shall ensure that elements of the Department of Defense that undertake intelligence support activities pursuant to this chapter conduct an annual review and audit of such support activities.

c. Intelligence support activities authorized under this chapter shall be protected pursuant to 50 U.S.C. 403(d)(3).

d. "The table of chapters at the beginning of subtitle A of such title and at the beginning of Part I of such subtitle are each amended by inserting after the item relating to chapter 18 the following new item:

19. Support for Intelligence.....391.

**TITLE VI - ENHANCED FBI COUNTERINTELLIGENCE CAPABILITIES**

Section 601(a): Amends Section 1114 (a)(1) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414) by adding the following new paragraph:

(a)(5) Notwithstanding any provisions of federal, state, local or foreign law to the contrary, a financial institution, or officer, employee, or agent of a financial institution, shall provide access to, and copies of, financial records of a customer that are responsive to a request made by a Government authority authorized to conduct foreign intelligence or counterintelligence activities, for purposes of conducting such activities.

Section 602 (a): Amends Chapter 33 of title 28 by adding at the end thereof the following new section:

SEC. 538. Access to Telephone Toll Records

(a) Notwithstanding any provisions of federal, state, or local law to the contrary, upon receipt of a certification signed by the Director of the Federal Bureau of Investigation or a supervisory official of a rank designated by the Director, that the Federal Bureau of Investigation is conducting a foreign counterintelligence investigation in accordance with applicable guidelines established by the Attorney General of the United States, a communications common carrier shall produce requested telephone subscriber information and toll billing record information and meets the standards to mark such a request as set forth in subsection (a).

(b) Notwithstanding any provisions of federal, state or local law, at the request of another agency within the Intelligence Community, as defined in Executive Order 12333, or successor orders, which request meets the standards contained in the guidelines referred to in subsection (a), the Federal Bureau of Investigation is authorized to request telephone toll record information when the information is relevant to the intelligence responsibility of such agency, and a communications common carrier shall produce the requested telephone subscriber information and toll billing record information.

(c) No officer, employee, or agent of the communications common carrier shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to the subscriber information and/or toll billing record information.

(d) The Federal Bureau of Investigation is authorized to disseminate information obtained pursuant to this section to other agencies within the Intelligence Community, as defined in Executive Order 12333 or successor orders, when the information is relevant to foreign counterintelligence responsibilities of such agency."

(b) The table of contents for chapter 33 of title 28, United States Code is amended by adding at the end thereof the following:

538. Access to Telephone Toll Records.

Section 603(a): Amends Section 9101(b) of Title 5 as follows:

(1) (b) (1) Upon request by the Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, or the Federal Bureau of Investigation, criminal justice agencies...

(2) (b) (3) (A) Upon request by a State or locality, the Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, or the Federal Bureau of Investigation shall enter into an agreement...

(3) (b) (3) (B) When the Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, or the Federal Bureau of Investigation" and a State...

(4) (c) The Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, and the Federal Bureau of Investigation, shall not obtain...

(b) Amends Title VIII of the Intelligence Authorization Act for Fiscal Year 1986 as follows:

Sec. 803(a) Within two years after the date of enactment of this Act, the Department of Justice, after consultation with the Department of Defense, the Office of Personnel Management, [and] the Central Intelligence Agency, and the Federal Bureau of Investigation, shall report...

TITLE VII.- DOD ADMINISTRATIVE AND PERSONNEL IMPROVEMENTS

Section 701: Amends paragraph 1604(e) (1) of chapter 83 of title 10, United States Code, as follows:

Sec. 1604.

"(e) (1) Notwithstanding any other provisions of law, the Secretary of Defense may, during fiscal years [1985 and 1986] 1987 and 1988, terminate the employment of any civilian officer or employee of the Defense Intelligence Agency whenever he considers that action to be in the interests of the United

States and he determines that the procedures prescribed in other provisions of the law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

Section 702 (a): Amends Chapter 167 of title 10, United States Code by adding at the end thereof the following new section:

2795. Exchange of Mapping, Charting and Geodesy Data with Foreign Nations.

"The Secretary of Defense may subject to the requirements of Section 112b of Title I of the United States Code and the regulations promulgated thereunder (22 CFR Part 181), and under such additional regulations as are deemed appropriate, authorize the Defense Mapping Agency to exchange or furnish mapping, charting and geodetic data, supplies or services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.

(b) The table of contents of Chapter 167 of Title 10, United States Code is amended by adding at the end thereof the following:

2795. Exchange of Mapping, Charting and Geodesy Data with Foreign Nations.

Section 703. Amends subsection 1605(a) of chapter 83 of title 10, United States Code as follows:

Section 192. Benefits for certain employees of the Defense Intelligence Agency

(a) The Director of the Defense Intelligence Agency, on behalf of the Secretary of Defense, may provide to civilian personnel of the Department of Defense who are United States nationals, who are assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for the purpose of this subsection, allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs



(2), (3), (4), (5), (6), (7), (8), and (13) of section 901 and under sections 903, 705 and 2308 of the Foreign Service Act of 1980 (22 U.S.C. 4025; 22 U.S.C. 4081 (2), (3), (4), (5), (6), (7), (8), and (13); 22 U.S.C. 4083; 5 U.S.C. 5924(4)).

Section 704(a): No substantive changes.

#### TITLE VIII - GENERAL PROVISIONS

Section 801: No substantive change

INTELLIGENCE AUTHORIZATION ACT  
FOR FISCAL YEAR 1987

COST ANALYSIS

TITLE I

INTELLIGENCE ACTIVITIES

Section 101: Fiscal year 1987 authorizations are contained in the Classified Schedule of Authorizations.

Section 102: Cost analysis not applicable.

Section 103: Cost contingent upon exercise of permissive authority.

TITLE II

INTELLIGENCE COMMUNITY STAFF

Section 201: The fiscal year 1987 authorization is \$22,938,000.00

Section 202: Cost analysis not applicable.

Section 203: Cost analysis not applicable.

TITLE III

CENTRAL INTELLIGENCE AGENCY  
RETIREMENT AND DISABILITY SYSTEM

Section 301: The fiscal year 1987 authorization is \$125,800,000.00.

TITLE IV

ADMINISTRATIVE PROVISIONS RELATED  
TO INTELLIGENCE AGENCIES

Section 401: Cost analysis not applicable.

Section 402: Cost analysis not applicable.

Section 403: Cost analysis not applicable.

TITLE V

SUPPORT FOR DEFENSE INTELLIGENCE ACTIVITIES

Section 501: Enactment of this legislation should not result in any additional cost to the Department of Defense or the Federal Government.

TITLE VI - ENHANCED FBI COUNTERINTELLIGENCE  
CAPABILITIES

Section 601: Cost analysis not applicable.

Section 602: Cost analysis not applicable.

Section 603: Estimated cost of \$40,000.00.

TITLE VII - DOD ADMINISTRATIVE PERSONNEL  
IMPROVEMENTS

Section 701: Cost analysis not applicable.

Section 702: Cost analysis not applicable.

Section 703: Cost contingent upon necessity to use prescribed authority.

Section 704: Cost analysis not applicable.

TITLE VIII - GENERAL PROVISIONS

Section 801: Cost contingent upon necessity to use prescribed authority.