

ROUTING AND TRANSMITTAL SLIP

Date

24 JAN 1986

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3.	DDA	<i>[Signature]</i>	27 JAN 1986
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REMARKS

OP'S AND OS' RESPONSES ATTACHED.

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FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
	Phone No.

5041-102

* U.S.G.P.O.: 1983-421-529/320

OPTIONAL FORM 41 (Rev. 7-76)
 Prescribed by GSA
 FPMR (41 CFR) 101-11.206



23 JAN 1986

STAT

MEMORANDUM FOR: [Redacted]

Chief, Legislation Division
Office of Legislative Liaison

STAT

FROM: [Redacted]

Director of Security

100-1322

SUBJECT: Comments on Draft Intelligence Authorization Act for Fiscal Year 1987

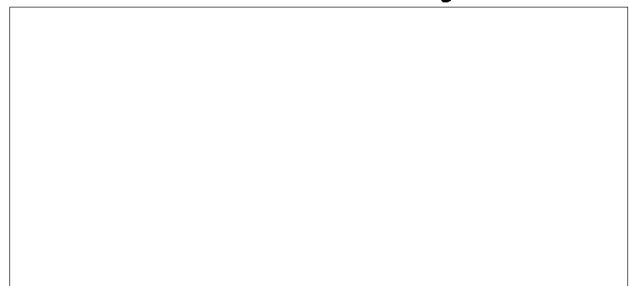
A review of Subject draft disclosed no objection except to portions of Title IX, Section 901 as follows:

° Section 901(a) - There is a typographical error in the first line. It should read, "...an officer or employee of the United States..."

° Section 901(a) and (b), and the Analysis and Explanation, page 59 - Subsection (a) of 901, states that it would not be illegal under the Act to make an unauthorized disclosure to any federal civilian or military person. It is the view of the Office of Security that the law should penalize any unauthorized disclosure by a person having authorized access to any person who is not authorized such access. Persons having access to classified information are responsible for determining the eligibility of persons to whom they convey such information; the fact that the other person merely is a federal or military employee should not relieve the offender of that responsibility nor from liability under the proposed law.

° Section 901(c)(iii) - It is suggested that the word, "right" be deleted. Provision for access by those having a "right", ie, elected officials, is made separately later in the same paragraph. It is believed that we should avoid implying that there are any others who have a right to access.

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JAN 23 1986

MEMORANDUM FOR: Chief, Legislation Division
Office of Legislative Liaison

FROM: Robert W. Magee
Director of Personnel

SUBJECT: Draft Intelligence Authorization Act for
Fiscal Year 1987

1. We have reviewed the subject draft legislation and have a number of comments.

2. First, the wording of Section 403 of the proposed Act (p. 4 and p. 68), which is intended to extend the extra retirement credit option for service at unhealthful posts to Civil Service Retirement System and other non-CIARDS participants, needs correction. The provision currently reads:

The provisions of subsection 251(b) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) authorizing the Director of Central Intelligence to establish a list of unhealthful posts for which an extra retirement credit for service at such posts may be provided to an Agency employee who is a participant in the Civil Service Retirement and Disability System or in a new Government retirement system as defined in the Federal Physicians Comparability Allowance Act of 1978, as amended, in the same manner and to the same extent in the case of an Agency employee who is a participant in the Central Intelligence Agency Retirement and Disability System. (Emphasis added)

It is not clear whether the "may be provided" clause is intended to modify the subject of the sentence--i.e., "the provisions of subsection 251(b) of the [CIA] Retirement Act"--or to modify the phrase, "for which an extra retirement credit for service at such posts." If the former is the case, then the phrase, "for which an extra retirement credit for service at such posts," is

SUBJECT: Draft Intelligence Authorization Act for
Fiscal Year 1987

grammatically incomplete; if the second is the case, then the whole sentence has no subject verb. We suggest the following revision of Section 403 to cure this problem:

The provisions of subsection 251(b) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) authorizing the Director of Central Intelligence to establish a list of unhealthful posts for which an extra retirement credit for service at such posts may be provided to an Agency employee, shall apply to an Agency employee who is a participant in the Civil Service Retirement and Disability System or in a new Government retirement system as defined in the Federal Physicians Comparability Allowance Act of 1978, as amended, in the same manner and to the same extent as in the case of an Agency employee who is a participant in the Central Intelligence Agency Retirement and Disability System.
(Emphasis added)

3. Second, Section 901 of the draft Act (p. 24 and p. 88) literally would make it a crime for a current or former federal employee to disclose classified information to even a cleared independent contractor or foreign liaison service employee, since an independent contractor or foreign intelligence official is not "an officer or employee of the United States." We believe this is not the intent of the provision and would suggest that it be revised either by striking the words, "who is not an officer or employee of the United States," or by adding immediately after that phrase the following: "or person who has a contractual or official liaison relationship with the United States."

4. Third, we detected several errors in the draft (there may be others). On p. 16, in Section 703(a)(2)(c), "and employees" should read, "or employee." On p. 24, in Section 808(3)(d), the second "or" either should be "of" or could be deleted. On p. 26, in the last sentence of Section 901(f), the word "proprietary" should be "propriety."

Robert W. Magee

Robert W. Magee

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ROUTING AND TRANSMITTAL SLIP

Date

21 JANUARY 1986

TO: (Name, office symbol, room number, building, Agency/Post)		Initials	Date
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Comment	Investigate	Signature	
Coordination	Justify		

REMARKS

The attached memo was received in ODDA late morning 21 January. If we have comments, we must report them to OLL by noon Thursday, 23 January.

If you have comments, please respond directly to OLL (by telephone or memorandum) and let me know after the fact. Thank you.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

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OPTIONAL FORM 41 (Rev. 7-76)
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* U.S.G.P.O.: 1983-421-529/320

ROUTING AND TRANSMITTAL SLIP		Date
		21 JANUARY 1986
TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
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Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
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Coordination	Justify	

REMARKS

The attached memo was received in ODDA late morning 21 January. If we have comments, we must report them to OLL by noon Thursday, 23 January.

I have sent via the 2:00 p.m. courier a copy to D/OP and D/OS for comments. If you have comments, please pass them to me and I will incorporate our response. Thank you.

cc: ADDA
MS/DDA

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FROM: (Name, office symbol, Agency/Post)	Room No.—Bldg.
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	FORM 41 (Rev. 7-76) GSA FPMR (41 CFR) 101-11.206

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IMMEDIATE

REFERENCE

Form 160c
3-65

(13)

OLL 86-0100
21 January 1986

MEMORANDUM FOR: See Distribution

STAT FROM:

 Chief, Legislation Division
Office of Legislative Liaison

 Subject: Request for Comments - Draft Intelligence
Authorization Act for Fiscal Year 1987

1. Attached for your review and comment is a first draft of the Intelligence Authorization Act for Fiscal Year 1987. Following receipt of your comments, this draft will be transmitted to the Office of Management and Budget (OMB) for Administration clearance prior to its submission by the Director of Central Intelligence (DCI) to the Congress.

2. Titles I through III and X of the bill are, for the most part, routine in nature and similar to comparable provisions contained in the Fiscal Year 1986 Authorization Act (P.L. 99-169).

3. Title IV contains a number of Agency and Community provisions. Section 401 removes an overly burdensome and unnecessary obligation of the Central Intelligence Agency (CIA) and National Security Agency (NSA) to publish classified record destruction schedules in the Federal Register. Section 402 is the "interlocutory appeal" provision which was included in last year's bill as submitted to the Congress. Section 403 provides an "unhealthful posts" retirement differential for non-CIARDS Agency employees. You will recall that last year's bill contained a provision granting this differential to participants in the Central Intelligence Agency Retirement and Disability System (CIARDS). Section 404 is the special drug and alcohol abuse provision for CIA and NSA also contained in last year's bill as submitted to the Congress. Section 405 contains a limitation on the personal tort liability of Intelligence Community personnel which was included in the version of last year's bill sent to OMB.

4. Title V of the bill is the version of the Department of Defense (DoD) proprietaries legislation which was submitted to the Congress last year (in contrast to the version contained in the "Defense Intelligence Commercial Entities Act" as recently proposed by minority members of the House Permanent Select Committee on Intelligence (HPSCI)).

5. Title VI contains a variety of provisions designed to improve the counterintelligence capabilities of the Federal Bureau of Investigation (FBI). Section 601 would mandate that financial institutions cooperate with Federal Government agency requests for records in connection with counterintelligence investigations. Section 602 would allow FBI access to certain tax records in counterintelligence investigations. Section 603 would authorize FBI access to telephone toll records in such investigations. Section 604 would authorize the FBI and DoD to expend funds to bring foreign counterintelligence officials to the United States for consultation. Section 605 would add the FBI to that group of agencies (CIA, DoD and the Office of Personnel Management) who, under P.L. 99-169, are authorized to obtain state and local criminal history record information on applicants.

6. Title VII contains various provisions which would improve the administrative and personnel authorities of the military intelligence agencies. Section 701 provides a method for insuring the security of promotions for military intelligence officers. Section 702 extends the authority of the Secretary of Defense to terminate civilian employees of the Defense Intelligence Agency (DIA). Section 703 extends certain other personnel management authorities which the Secretary now has vis-a-vis DIA to the other military intelligence agencies. Section 704 clarifies the authority of the DoD's Defense Mapping Agency to enter into cooperative agreements and other arrangements with foreign governments. Section 705 extends to DIA civilian employees certain medical benefits already enjoyed by other Intelligence Community personnel stationed overseas. Section 706 authorizes the "Exceptional Intelligence Community Awards Program".

7. Title VIII bars employees within the Intelligence Community for a period of two years following termination of Government service from directly or indirectly accepting employment, entering into any advisory, financial or other relationship with a designated foreign power or providing assistance, guidance, or information concerning intelligence to such foreign powers. Heads of departments or agencies could, however, exempt classes of employees from this prohibition.

Nonexempt employees would be required to seek approval from their former employing agency, and the head of the agency could in his or her discretion approve or disapprove such application. This title would provide for criminal penalties of not more than \$10,000 or imprisonment for no greater than two years for violation of its provisions. Every agency within the intelligence community would be required to promulgate regulations to carry out the provisions of this title. For the purpose of this title, a designated foreign power would include all foreign countries, foreign political parties, all governments in exile, and would include any quasi-governmental, international or multinational organization.

8. Title IX contains the unauthorized disclosure (leaks) provision included in the version of last year's bill sent to OMB.

9. The shortened budget schedule mandated by the "Gramm-Rudman-Hollings" Budget Act means that the entire authorization/appropriation process will be compressed and expedited this year. Specifically, OMB has requested a copy of our authorization bill by this Friday, 24 January 1986. In addition, Chairman Hamilton of HPSCI has requested that the Committee receive a copy of the Administration's bill no later than 7 February. Accordingly, we must receive your comments on the bill no later than noon, Thursday, 23 January. Comments received after this date will not be considered. Given the limited time available before the bill must be transmitted to OMB this Friday, there may not be a sufficient opportunity to resolve major substantive disputes between agencies on specific provisions of the bill. We have contacted OMB, however, concerning the limited review the bill will receive prior to transmittal to that agency and OMB will ensure that each agency has a fuller opportunity to review and comment upon the bill during this additional OMB coordination process.

10. If you have any questions, please do not hesitate to contact me on

Attachment:
as stated

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Distribution:

Original - Leg/Sub - Intelligence Auth Act FY 87

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- 1 - DoD (Hess)
- 1 - DOA (Winchester)
- 1 - DIA [redacted]
- 2 - DIA [redacted]
- 1 - NSA [redacted]
- 1 - DOJ (Perkins)
- 2 - FBI (Mcschella/Moran)

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LEG/OLL: [redacted] jab(17 Jan 1986)

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#4 - 20 January 1986

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; and
- (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 the 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 _____.

Authorization of Personnel End Strength

SEC. 202.(a) The Intelligence Community Staff is authorized _____ 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 _____.

TITLE IV - ADMINISTRATIVE PROVISIONS RELATED
TO INTELLIGENCE AGENCIES

CIA and NSA Record Destruction Schedules

SEC. 401. Section 3303a 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 the Central Intelligence Agency or the National Security Agency."

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 certifies that the decision will have an adverse impact upon the national security of the United States. 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.".

Retirement Benefits for Agency Employees Serving
in Unhealthful Areas

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

"Extra Credit for Service at Unhealthful Posts

SEC. 16. The provisions of subsection 251(b) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) authorizing the Director of Central Intelligence to establish a list of unhealthful posts for which an extra retirement credit for service at such posts may be provided to an Agency employee who is a participant in the Civil Service Retirement and Disability System or in a new Government retirement system as defined in the Federal Physicians Comparability Allowance Act of 1978, as amended, in the same manner and to the same extent in the case of an Agency employee who is a participant in the Central Intelligence Agency Retirement and Disability System.".

Protection of Agency Activities

SEC. 404. (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."

Modification of Certain Liabilities
of Intelligence Community Personnel

SEC. 405. The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 1001. Modification of Certain Liabilities of
Intelligence Community Personnel

"(a) The remedy against the United States provided by sections 1346(b) and 2672 of the title 28 of the United States Code for claims for injury or loss of property, or personal injury or death, resulting from the negligent or wrongful act

or omission of any officer or employee of the Intelligence Community while acting within the scope of his office or employment shall hereafter be exclusive of any other civil action or proceeding, arising out of or relating to the same subject matter, against the officer or employee whose act or omission gave rise to the claim, or against the estate of such officer or employee.

"(b) The United States shall be liable, to the extent that liability for such tort is recognized or provided by applicable Federal law, for claims for money damages sounding in tort arising under the Constitution of the United States resulting from an act or omission of any officer or employee of the Intelligence Community while acting within the scope of his office or employment. Such claims shall be treated in the same manner as claims cognizable under section 1346(b) and 2672 of title 28 of the United States Code. The remedy against the United States provided by this subsection shall hereafter be exclusive of any other civil action or proceeding, arising out of or relating to the same subject matter, against any officer or employee whose act or omission gave rise to any such claims, or against the estate of the officer or employee. This remedy shall be deemed an equally effective substitute for any recovery against the officer or employee in his individual capacity directly under the Constitution. The United States shall not be liable for interest prior to judgment or for punitive damages.

"(c) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) and (b) of this section (or the estate of such person) for any such claims. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or any attested true copy thereof to such person's immediate superior or to whomever was designated by the Federal agency, which employed the individual at the time of the alleged act or omission that gave rise to the action or proceeding, to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of that Federal agency.

"(d) Upon certification by the Attorney General that the defendant officer or employee was acting within the scope of his office or employment at the time of the incident out of which the action arose, any civil action or proceeding commenced in the United States district court shall be deemed an action against the United States under the provisions of

title 28 of the United States Code and all references thereto, and the United States shall be substituted as the party defendant.

"(e) Upon certification by the Attorney General that the defendant officer or employee was acting within the scope of his office or employment at the time of the incident out of which the action arose, any civil action or proceeding described in subsection (c) which is commenced in a State court shall be removed, without bond, at any time before trial, by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action shall be deemed an action brought against the United States under the provision of title 28 of the United States Code and all references thereto, and the United States shall be substituted as the party defendant. The certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

"(f) In any civil action or proceeding brought under this section, the United States shall have available all defenses heretofore available to the officer or employee whose act or omission gave rise to the claim, and all defenses to which it would have been entitled if the action had originally been commenced against the United States under section 1346(b) and sections 2671 through 2680 of title 28 of the United States Code, except that section 2680(k) shall not apply to any cause of action covered by this section.

"(g) The Attorney General may compromise or settle any claim asserted in any such civil action or proceeding in the manner provided in section 2677 or title 28 of the United States Code, and with the same effect."

TITLE V - SUPPORT FOR DEFENSE INTELLIGENCE COLLECTION ACTIVITIES

SEC. 501. 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 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. "Foreign intelligence" means information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons, but not including counterintelligence except for information on international terrorist activities.

d. "Counterintelligence" means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassination conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

e. "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. "Subject to the availability of appropriations, 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. Oversight.

"The Secretary of Defense shall establish a system to ensure oversight of and accountability for the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

"SEC. 396. General Provisions.

a. "The intelligence support activities authorized pursuant to sections 393 and 394 may be conducted only in accordance with regulations promulgated by the Secretary of Defense.

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 and shall ensure that the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence are kept fully and currently informed of such activities, as prescribed in section 413 of Title 50.

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

Improved Access to Financial Records in Connection
with Counterintelligence Investigations

SEC. 601. Section 1114 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414) is amended by:

(a) deleting subparagraph (A) from paragraph (1) of subsection (a), beginning with the dash that follows the word "from," and ending with the letter "(B)"; and

(b) adding at the end of that section the following new subsection:

"(c) (1) 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;

"(2) A request for access to, or copies of, financial records, for foreign intelligence or counterintelligence purposes, by a Government authority authorized to conduct such activities, shall include the certificate required in section 3403(b) of this Title, signed by a supervisory official of a rank designated by the head of the Government authority.

"(3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.

"(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

"(5) The provisions of sections 3415, 3417, 3418 and 3421(b) shall apply to requests made pursuant to this subsection."

Improved Access to Tax Records in Connection
with Counterintelligence Investigations

SEC. 602. Section 6103(i) of title 26, United States Code is amended by adding at the end thereof the following new paragraph:

"(8) Federal Bureau of Investigation Counterintelligence Activities --Upon a determination by the Attorney General or his designee that there is probable cause to believe that a taxpayer is a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)), the return of the taxpayer and return information which relates to such taxpayer shall, upon request for foreign counterintelligence purposes by the Federal Bureau of Investigation approved by the Attorney General, be open (to the extent of the approved request) to inspection by, or disclosure to, the Federal Bureau of Investigation. The Federal Bureau of Investigation is authorized to transfer taxpayer information obtained pursuant to this subsection to another federal agency or department when it is relevant to foreign counterintelligence matters within the jurisdiction of that agency or department."

Access to Telephone Toll Records

SEC. 603. (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) 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) 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.

(c) 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."

Authority to Expend Funds for Consultation
with Foreign Officials

SEC. 604. The Federal Bureau of Investigation and the Department of Defense are authorized to make payments from their appropriation for expenses incurred while hosting foreign officials who have counterintelligence responsibilities in their own countries while traveling to the United States for consultation.

Access to State and Local
Criminal Records

SEC. 605. (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

Secure Promotions for Military Intelligence Officers

SEC. 701. (a) Section 624 of title 10, United States Code, is amended:

(1) by adding immediately after the "(c)" in subsection 624(c) the paragraph designator "(1)"; and

(2) By adding at the end of paragraph (c)(1) the following new paragraph:

"(2) Upon determination by the Secretary concerned that the appointment procedures in paragraph (c)(1) may be harmful to the safety and well being of an officer because of that officer's participation in classified intelligence operations or that such procedures with respect to a specific officer could compromise classified intelligence operation, the Secretary of Defense shall approve the use of a secure promotion list for the appointment of affected officers and shall present such list to the President. The President alone may appoint the officers on that list in grades below Brigadier General or Rear Admiral (lower half). The Secretary of Defense shall report on the number of officers promoted at least once a year to the Committees on Armed Services of the Senate and House of Representatives."

(b) The provisions of section 701 (a) of this Act are effective upon the date of its enactment, except that an officer of an armed force who, since September 15, 1981, has been recommended by a selection board convened under this Chapter 36 of title 10, United States Code, for promotion to a grade below Brigadier General or Rear Admiral (lower half) and who has not been promoted because to do so would have compromised a classified intelligence operation or been harmful to the safety or well being of the officer may be:

(i) promoted by the President alone; (ii) provided an effective date of promotion for all purposes, to include pay and allowances and eligibility for consideration for promotion to the grade above that for which previously selected by a special board convened under 10 U.S.C. 628(a)(1); and (iii) provided a date of rank and position on the active-duty list that such officer would have had if his or her name had been included on the list from which that officer was excluded for security purposes and which list was approved by the President and forwarded to the Senate. An officer promoted under this section shall not, during the fiscal year in which promoted, be counted against any strength in grade limitation established by law.

(c) The Secretary concerned is authorized to adjust:

(i) the effective date of promotion for all purposes, to include pay and allowances and eligibility for consideration to the next higher grade by a special selection board convened under 10 U.S.C. 628(a)(1); and (ii) the date of rank and position on the active-duty list of officers whose appointment under Chapter 36 of title 10, United States Code, in grades in which they are currently serving was delayed because of their participation in a classified intelligence operation.

(d) The Secretary concerned is authorized, without regard to 10 U.S.C. 1552 or the procedures established thereunder, and without application by the officer concerned, to correct the records of the officers concerned to reflect actions taken under sections 706(b) and (c) above. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States. The Secretary of Defense shall include in the report required by subsection 701(a) of this Act the number of officers promoted under this section.

(e) The authority to take actions under subsections 701(b) - (d) of this Act shall expire on September 30, 1987.

Extension of Secretary's Termination Authority for
DIA Civilian Personnel

SEC. 702. 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".

Extension of Certain Personnel Management Authorities
to Military Intelligence Agency Personnel

SEC. 703. (a) Section 1604 of Title 10, United States Code, is amended:

(1) in paragraph (1) of subsection (a) by inserting--

(a) after "Defense Intelligence Agency" the phrase "and such positions for civilian intelligence officers and employees of the military departments"; and

(b) after the phrase "the functions of such Agency" the words "and departments";

(2) in subsection (b) by inserting--

(a) after the phrase "Except in the case of an officer or employee of the Defense Intelligence Agency" the phrase "or a civilian intelligence officer or employee of the military departments";

(b) between the word "Intelligence" and the phrase "Senior Executive Service" the phrase "or Military Department"; and

(c) after the phrase "no officer or employee of the Defense Intelligence Agency" the phrase "or civilian intelligence officer and employees of the military departments";

(3) in subsection (c) by inserting after the phrase "in or under which the Defense Intelligence Agency" the phrase "or the military departments";

(4) in subsection (d) by inserting after the phrase "officers and employees of the Defense Intelligence Agency" the phrase "or civilian intelligence officers and employees of the military departments";

(5) after subsection (d), by adding the following new subsection:

"(e) With respect to the military departments, the Secretary of Defense may delegate authority under this subsection only to the Secretaries of the military departments."

(6) by redesignating the current subsection (e) as subsection (f) and in the redesignated subsection (f) inserting --

(a) in paragraph 1 after the phrase "terminate the employment of any civilian officer or employee of the Defense Intelligence Agency" the phrase "or may, during the fiscal years 1987 and 1988, terminate the employment of any civilian intelligence officer or employee of the military departments"; and

(b) in paragraph 3 the phrase "With respect to the Defense Intelligence Agency" before the phrase "the Secretary of Defense may delegate";

(7) by adding at the end of the redesignated subsection (f) the following new paragraph:

"(4) With respect to the military departments, the Secretary of Defense may delegate authority under this subsection only to the Secretaries of the military departments. An action to terminate any civilian intelligence officer or employee by the Secretary of any military department shall be appealable to the Secretary of Defense."

(b) The title of Chapter 83 of title 10, United States Code, "DEFENSE INTELLIGENCE AGENCY CIVILIAN PERSONNEL" is amended by inserting after the word "PERSONNEL" the phrase "AND CIVILIAN INTELLIGENCE OFFICERS AND EMPLOYEES OF THE MILITARY DEPARTMENTS".

(c) The title of Chapter 83 in the table of contents of Part II of title 10 is amended to read as follow:

"83. Defense Intelligence Agency Civilian Personnel and Civilian Intelligence Officers and Employees of the Military Departments.....1601".

Clarification of Defense Mapping Agency Authorities

SEC. 704.(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, under such 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."

Overseas Medical Care for DIA Civilian Employees Stationed Overseas

SEC. 705. Subsection 1605(a) of chapter 83 of title 10, United States Code, is amended:

- (1) by striking out "paragraphs (2), (3), (4), (6), (7), (8), and (13)" and inserting in lieu thereof "paragraphs (2), (3), (4), (5), (6), (7), (8), and (13)"; and
- (2) by striking out within the parentheses at the end of subsection (a) "22 U.S.C. 4081 (2), (3), (4), (6), (7), (8), and (13)" and inserting in lieu thereof "22 U.S.C. 4081 (2), (3), (4), (5), (6), (7), (8), and (13)".

Exceptional Intelligence Community Awards Program

SEC. 706.(a) Chapter 57 of title 10, United States Code is amended by inserting after section 1124 the following new section:

"1124a. Cash awards for exceptional foreign intelligence collection

"(a) Under regulations promulgated by the Director of Central Intelligence, a member of the armed forces may accept a cash award made in recognition of the member's exceptional performance while serving on active duty in collecting or reporting foreign intelligence information affecting the national security of the United States. A cash award under this section is in addition to the pay and allowances of the recipient.

(b) An award under this section may be paid notwithstanding the member's death, separation, or retirement from the armed force concerned.";

(b) The table of contents at the beginning of chapter 57 of title 10 is amended by inserting after section 1124 the following new item:

"SEC. 1124a. Cash awards for exceptional foreign intelligence collection"; and

(c) The amendment made by this section shall apply only to awards made after September 30, 1986.

TITLE VIII - RESTRICTIONS ON ASSISTANCE TO
FOREIGN POWERS BY FORMER INTELLIGENCE OFFICERS
OR EMPLOYEES

SEC. 801. The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VIII - RESTRICTIONS ON ASSISTANCE TO
FOREIGN POWERS BY FORMER INTELLIGENCE OFFICERS
OR EMPLOYEES

"801. Unlawful Assistance

"(a) No person, having been at any time within the preceding two years an officer or employee of an agency within the Intelligence Community, shall without written approval to do so from the intelligence agency which employed such individual: i) enter into (either directly or indirectly) any employment, advisory, financial or other relationship, whether paid or unpaid, with a designated foreign power; ii) provide aid, services or assistance to a designated foreign power; or,

iii) provide guidance, assistance or information to a designated foreign power concerning intelligence, or information derived from or directly related to an officer or employee's former position within the Intelligence Community.

"(b) Subsection (a) of this section shall not apply to an officer or employee of a department, agency, or independent establishment of the United States who enters into an employment, advisory, financial or other relationship with a designated foreign power or who provides aid, services or assistance to a designated foreign power in the course of official duties as such officer or employee.

"(c) The head of an intelligence agency may in his discretion waive the applicability of subsection (a) of this section to any particular person, or class of persons, formerly employed by such agency, to whom subsection (a) would otherwise apply.

"802. Required Reports

"(a) A person seeking approval to enter into a relationship or engage in activities which would otherwise be prohibited by section 801 of this title shall apply to the last intelligence agency which employed such person for approval and shall submit the following information:

- (i) the foreign power involved;
- (ii) the nature of the activity or relationship and anticipated duration of the activity or relationship;
- (iii) the identities of any persons on whose behalf the applicant will be acting in the course of the activity or relationship; and
- (iv) such other information as the head of the intelligence agency shall require to carry out this title.

"(b) The head of an intelligence agency to which application is made in accordance with subsection (a) of this section may in his discretion grant approval to enter into a relationship or engage in a particular activity if he concludes that the relationship or activity: (i) will not involve the unauthorized disclosure or use of information classified pursuant to statute or Executive Order; and, (ii) will not be inconsistent with national security. The head of the intelligence agency may in his discretion place conditions upon the grant of approval consistent with national security. All grants of approval, including any applicable conditions, shall be in writing.

"(c) A grant of approval in accordance with subsection (b) of this section shall not affect any potential civil or

criminal liability, under any provisions of law other than the provisions of this title, of the person to whom approval is granted.

"803. Continuing Duty To Report

"(a) Every person granted approval to enter into a relationship or engage in an activity in accordance with section 802 of this title and who continues to be subject to section 801 of this title shall file with the intelligence agency which granted the approval a report for each calendar year during the continuation of the financial relationship or activity. Such reports shall be filed within 30 days after the end of the calendar year.

"(b) Every person granted approval to enter into a relationship or engage in an activity in accordance with Section 802 of this title shall file a report of any material change in circumstances affecting the relationship or activity with the intelligence agency which granted the approval within ten days of the occurrence of such change. The head of the intelligence agency may in his discretion require a person reporting a material change to apply for a new grant of approval for the relationship or other activity in accordance with section 802 of this title. If the head of the intelligence agency declines to grant a new approval in accordance with section 802 of this title, the person who filed a report of a material change shall terminate the relationship or other activity within ten days after receiving actual notice that the head of the intelligence agency has declined to grant a new approval.

"(c) Every person granted approval to enter into a relationship or engage in an activity in accordance with section 802 of this title shall file a report within 30 days of the termination of the financial transaction or other relationship with the intelligence agency which granted the approval.

"(d) Reports required to be filed by this section shall contain such other information as the head of the intelligence agency with which the report must be filed may require to carry out the provisions of this title.

"804. False, Misleading, Or Missing Information

"(a) It shall be unlawful to fail to file any report required to be filed by Section 803 of this title. Such

failure to file shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitations or other statute to the contrary.

"(b) It shall be unlawful to make any false or untrue statement of material fact, or to omit a material fact necessary to make any statement made not misleading with respect to any material fact, in connection with the filing of any applications or reports required by this title.

"(c) It shall be unlawful to omit from an application or report required by this title any information which the application or report is required to contain.

"805. Enforcement And Penalties

"(a) Whoever willfully violates section 801, subsection 802(a), section 803, section 804 of this Title, or any regulation issued in accordance with section 806 of this title, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; but no person shall be subject to imprisonment under this subsection for the violation of any regulation if he proves that he had no actual knowledge of such regulation.

"(b) Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this title, or regulations issued thereunder, or otherwise is in violation of the Title, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts, or for an order requiring compliance with any appropriate provision of the title or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper. The proceedings shall be made a preferred cause and shall be expedited in every way.

"806. Regulations

"The several heads of agencies within the Intelligence Community shall issue such regulations as may be appropriate to carry out the provisions of this title.

"807. Extraterritorial Jurisdiction

"There is jurisdiction over an offense or violation under this title committed outside the United States

if the individual committing the offense or violation is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 101(a)(20)).

"808. Definitions

"For purposes of this title:

- (1) The term 'intelligence agency' or 'agency within the Intelligence Community' shall mean: the Departments of State, the Treasury, Defense, and Energy; the Central Intelligence Agency; the Federal Bureau of Investigation; such other components of the United States Government as the President may designate as intelligence agencies or agencies within the Intelligence Community; the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence.
- (2) The term 'officer or employee' shall mean any person who is--
 - (a) employed by an intelligence agency or assigned or detailed to such agency and assigned to a component with responsibility for the conduct of: (i) foreign intelligence activities, (ii), counterintelligence activities, or (iii) special activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly;
 - (b) employed by the Central Intelligence Agency;
 - (c) employed by the Federal Bureau of Investigation;
 - (d) employed by the National Security Agency
 - (e) a Chief of mission or a member of the United States Foreign Service;
 - (f) A commissioned, warrant, or noncommissioned officer in the armed forces of the United States;
 - (g) a member of the armed forces who is assigned to the United States Army Special Forces; or
 - (h) a staff employee of the Senate Select Committee on Intelligence or the House Permanent Select Committee on Intelligence.
- (3) The term 'designated foreign power' shall mean:
 - (a) a government of a foreign country, a foreign political party, faction, entity or a government in exile of a foreign country;

- (b) any unit of a foreign government, including any foreign national state, local and municipal government;
- (c) any international or multinational organization whose membership is composed of any unit of foreign government; and,
- (d) any agent or representative of any such unit or or such organization while acting as such."

TITLE IX - UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION

SEC. 901. The National Security Act of 1947, (50 U.S.C. 401 et seq.) is amended by adding at the end thereof the following new title:

"TITLE IX - UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION

SEC. 901.(a) Whoever, being or having been an officer or employee of the United States or a person having or having had authorized access to classified information, willfully discloses or attempts to disclose, any classified information to a person who is not an officer or employee of the United States and who does not have authorized access to classified information, shall be fined not more than \$25,000, or imprisoned not more than five years, or both.

(b) Whoever, being or having been an officer or employee of the United States or a person having had authorized access to classified information, willfully aids or abets the violation of subsection (a), shall be fined not more than \$25,000, or imprisoned not more than five years, or both.

(c) As used in this section --

(i) the term "classified information" means any information or material that has been determined by the United States Government pursuant to an Executive Order, statute or regulation, to require protection against unauthorized disclosure for reasons of national security;

(ii) the term "disclose" or "discloses" means to communicate, furnish, deliver, transfer, impart, provide, publish, convey, or otherwise make available;

(iii) the term "authorized access" means having authority, right, or permission to receive classified

information or material within the scope of authorized government activities or pursuant to the provisions of a statute, Executive Order, directive of the head of any department or agency who is empowered to classify information, order of any United States court, or provisions of any rule or resolution of the House of Representatives or the Senate which governs the handling of classified information by the respective House of Congress.

(d) Nothing in this section shall be construed to establish criminal liability for disclosure of classified information in accordance with applicable law to:

(i) any court of the United States, or judge or justice thereof; or

(ii) the Senate or House of Representatives, or any committee or joint committee thereof.

(e) It is an affirmative defense to a prosecution under this section that:

(i) before the defendant's disclosure, the information that provides the basis for prosecution under this section officially had been disclosed publicly; or

(ii) the defendant did not obtain the classified information that provides the basis for prosecution under this section as a result of his duties as an officer or employee of the United States, or as a result of authorized access to classified information; or

(iii) the defendant has submitted the information that provides the basis for prosecution under this section to a department or agency of the United States for prepublication review, whether under a contract which provides for such review or otherwise, or for declassification review pursuant to the provision of an Executive Order, and (a) the United States informed defendant that it did not object to disclosure, or (b) the United States objected to such disclosure, or denied declassification, and such objection or denial was overruled in a final opinion or ruling of a court of the United States.

(f) Prosecution under this section shall be barred unless, prior to the return of an indictment or the filing of any information, the Attorney General and the head of the department or agency responsible for the classified information jointly certify in writing that, at the time of the disclosure, the information constituted properly classified information. Such certification shall be conclusive as to the propriety of the classification except that, if a defendant demonstrated

that the information that provides the basis for prosecution under this section was available from public sources or makes a prima facie showing that the information did not meet the substantive criteria for classification under applicable law, the prosecution may proceed if the United States establishes that the information, at the time of the disclosure, was properly classified because the particular disclosure reasonably could be expected to damage the national security. The court, based upon submissions of defendant and the United States, shall determine whether the information was properly classified. Upon request of the United States, the court's determination of the issue shall be in camera, ex parte. Any determination by the court on the propriety of the classification shall be de novo and a matter of law, and shall be conclusive except as provided in subsection (g) below.

(g) An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of the court with respect to the propriety of the classification of the information that provides the basis for prosecution under this section.

(h) There is jurisdiction under this section over an offense committed outside the United States."

TITLE X - GENERAL PROVISIONS

Authority for Conduct of Intelligence Activities

SEC. 1001. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

Increase in Employee Benefits Authorized by Law

SEC. 1002. 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 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 _____ 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 _____ for the Central Intelligence Agency Retirement and Disability Fund.

TITLE IV

ADMINISTRATIVE PROVISIONS RELATED TO INTELLIGENCE AGENCIES

Section 401 exempts the CIA and NSA 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. 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 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 the CIA and NSA 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.

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, even though the Government's legal arguments would likely eliminate the need for discovery or further judicial proceedings if the issues could be litigated fully on appeal. Moreover, in those cases where the disclosure of sensitive national security information is directly at issue, the United States needs the ability to protect its information from any unnecessary risk of immediate disclosure. Under current law the United States may find that the only means of obtaining an immediate appeal to obtain a dispositive ruling is to consider a contempt of court. These problems can be resolved if the United States can obtain the right to interlocutory appeal upon a certification that the national security justifies it. It is not intended, however, that the right established by this section in any way affect 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 Committees.

Section 403 amends the Central Intelligence Agency Act of 1949 to provide an additional retirement credit in lieu of a post differential for service by non-CIARDS Agency employees at unhealthful posts. As part of the FY86 Intelligence Authorization bill, Congress approved legislation authorizing extra retirement credits for those Agency employees who participate in the Central Intelligence Agency Retirement and Disability System. Under this legislation, Agency employees who participate in CIARDS would have the option to elect to receive a retirement credit of one and a half years for each year of service at an unhealthful post in lieu of a post differential. This benefit is the same as that provided to Foreign Service Officers under Section 817 of the Foreign Service Act of 1980.

Because the provision in the FY86 Intelligence Authorization Act was limited to CIARDS participants, those employees who participate in other retirement systems do not have the opportunity to earn extra retirement credits for service at unhealthful posts. This section expands the authority to pay extra retirement credits to those Agency employees who participate in the Civil Service Retirement System or in a "new Government retirement system" as defined in Section 203(a)(4) of the Federal Physicians Comparability Allowance Amendments of 1983. These Agency employees may serve in the same unhealthful posts as Agency employees who participate in CIARDS and equity demands that these Agency employees have the same chance to elect an extra retirement credit as CIARDS participants. The amount of extra retirement that would be paid and the circumstances under which it would be paid are the same as that authorized for CIARDS participants last year.

Section 404 amends the CIA Act of 1949 and the National Security Agency Act of 1959 to make clear that CIA and NSA 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 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, which outlaws handicap discrimination. By implication there will likely be a similar emphasis on treatment of drug abuse as a handicap with the same protection. This may very well result in an increased prospect of litigation whenever CIA or NSA 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 and NSA 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 and NSA to carry out their national security missions and functions, this amendment would clearly authorize CIA and NSA 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.

Section 405 amends the National Security Act of 1947 (50 U.S.C. 401 et seq.) so that, in tort actions, including actions arising under the U.S. Constitution, the United States will be substituted for individual defendants employed by Intelligence Community agencies who are sued in their personal capacities for acts undertaken in the scope of their Government employment. In recent years, it has become commonplace for senior Intelligence Community officials to be sued in their individual (as well as official) capacities for making national security judgments which they are authorized by law to make. Intelligence Community officials live under the constant fear that their official actions may result in years of litigation, and that a judgment for monetary damages may ultimately be entered against them. Responsible officials who must make the most sensitive decisions affecting the national security cannot be placed in an environment where they constantly have to be concerned about their personal and financial well-being. This provision amends the United States Code to provide that any cause of action a person may have for tort claims, including claims arising under the Constitution, for acts taken by Intelligence Community officials during the scope of their employment, will be against the United States exclusively.

This bill further provides that the existing procedures of the Federal Tort Claims Act, shall be applied to litigation under this section. Suits against intelligence officers or employees in their individual capacities are precluded. The sole remedy would be against the United States. This provision is intended to be a waiver of sovereign immunity with respect to Constitutional torts brought against officials in their individual capacities. It is intended to retain for the United States any defenses those individuals may have had in suits brought against them. Thus, for constitutional torts the United States for the first time shall be liable to the same extent as the officer or employee would have been in any Bivens action prior to the enactment of this provision. Remedies for common law and statutory torts will remain substantially the same, except that employees no longer will be subjected to suit at all, and claims of absolute or qualified immunity will be made by the United States.

The section further provides at subsection (c) that the Attorney General shall defend any action referred to in subsections (a) and (b). Personnel are required to initiate notification of any tort action to the relevant United States attorney.

Subsection (d) provides that a certification by the Attorney General that the officer or employee was acting within the scope of employment in an authorized activity shall convert the action into a suit against the United States.

Subsection (e) provides for removal of cases brought against officers or employees in state courts to federal district court, and substitution of the United States as proper party.

Subsection (f) provides that the United States shall have available to it all the defenses that would have been available to it and to a defendant sued in his individual capacity, and would nullify a provision in the Federal Tort Claims Act which would otherwise exclude any action for claims arising in foreign countries.

Subsection (g) emphasizes that the Attorney General may compromise or settle any claims brought under this section.

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 clarify congressional intent with regard to the establishment of 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 one of the terms in subsection 392a, "foreign intelligence", as it is defined in E.O. 12333.

Proposed subsection 392d defines one of the terms used in subsection 392a, "counterintelligence", as it is defined in E.O. 12333.

Proposed subsection 392e 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 395 requires the establishment of a system whereby the Secretary of Defense is responsible for ensuring adequate oversight and accountability for all intelligence support activities undertaken pursuant to this chapter.

Proposed subsection 396a requires all intelligence support activities authorized pursuant to proposed sections 393 and 394 to be undertaken in accordance with regulations promulgated by the Secretary of Defense.

Proposed subsection 396b 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. It further requires that the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence be kept fully and currently informed of all intelligence support activities.

Proposed subsection 396c 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., Section 3421.

Section 602 would provide access by the FBI to tax return information in foreign counterintelligence investigations. Disclosure of tax information by the Internal Revenue Service (IRS) is generally proscribed by §6103(a) of Title 26, United States Code. A variety of exceptions to the prohibition on disclosure of tax information are contained in Sec. 6103. With respect to criminal investigations, tax return information may be released without a court order if the matter pertains to tax administration. Release of tax returns and return information needed in the course of a non-tax criminal investigation must be authorized by a court order. 26 U.S.C., 6103 (i)(1)(A). Release of return information other than taxpayer return information for use in non-tax criminal investigations may be authorized by the Secretary of the Treasury upon receipt of a request from the head of a federal agency involved in enforcement of federal criminal statutes. For example, the Director of the FBI may request such information.

Unfortunately, none of the aforementioned provisions provide any access to tax returns or taxpayer return information in foreign counterintelligence investigations. Access to financial information, including tax returns, is important to investigating espionage activity because recent cases (e.g., Bell, Harper, Barnett) have shown that one important

motive for espionage can be financial gain. While it is possible to obtain tax return information through a court order for use in a criminal prosecution, there are instances where access to tax information is an important investigative aid even though criminal prosecution is not possible or desirable. In many of these cases, the national security interest of the United States is better served by convincing a person engaged in espionage to work against the intelligence service of a hostile government rather than prosecuting the individual. In other instances, there may not be enough evidence developed to anticipate going forward with a criminal prosecution. Enactment of this section will enable the FBI to obtain vital information in foreign counterintelligence investigations not connected with an impending criminal prosecution.

Enactment of this section also will be of vital help to the FBI in preventing the illegal export of high technology items. The buyers and sellers of goods containing advanced technology, the export of which is prohibited, conceal their activities in a series of small shell corporations. The ability of the FBI to trace the flow of money and make comparisons of losses and earnings in order to establish the fraudulence of the transaction and identify the final recipient of goods will be facilitated with access to tax records of individuals and businesses.

Enactment of this section also will be useful in helping the FBI keep track of certain foreign students who are sponsored by foreign governments. These students are required to file with the IRS Form 2063 (US Departing Alien Income Tax Statement), upon departure. These forms are collected in Philadelphia, Pennsylvania and are important to the FBI as a quick means of verifying the exact date of departure of a student. This information is not readily available from other sources. Consultation with officials of the IRS has determined that this information falls within the definition of taxpayer's return information and, therefore, is available only pursuant to a judicial order. Enactment of this section will allow the FBI access to these records without having to obtain a court order.

In summary, enactment of this section would authorize the FBI access, under proper controls, to tax return and taxpayer information of individuals who are subjects of foreign counterintelligence investigations and would allow for the dissemination of this information to other members of the Intelligence Community. Because the FBI can only obtain an individual's return under this section upon a determination by the Attorney General that there is probable cause to believe that a taxpayer is a foreign power or agent of a foreign power, use of this investigative technique will occur only after substantial information has been gathered about the taxpayer's involvement in espionage or activities of counterintelligence interest.

Section 603 provides access by the FBI to telephone subscriber information and toll billing record information from a communications common carrier. 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 communications common carriers to produce requested telephone subscriber information pursuant to an NSL signed by the Director of FBI or a supervisory official designated by him. The section also prohibits the disclosure of such a request and authorizes dissemination of information obtained pursuant to this section to other agencies within the Intelligence Community.

Section 604 would authorize the FBI to pay for the expenses necessary to conduct a foreign visitor exchange program. A number of United States Government agencies have foreign visitor programs wherein representatives or foreign agencies travel to the United States as guests of the United States agency to promote international cooperation between the two agencies. These visits are not training programs but rather observation programs to provide foreign visitors with an overview of the United States agency operations in certain areas in order to enhance the foreign United States agency operations in these areas and to foster greater international cooperation between the respective United States and foreign agency. Presently, there is no FBI authorized funding available to sponsor such a program. It is envisioned that this funding will be utilized to pay the expense of bringing to the United States certain Senior Executives who have counterintelligence responsibilities in foreign agencies with which the FBI maintains close contact. These foreign representatives would be invited to the United States to provide them with a thorough overview of FBI operations in areas of mutual interest. These visits also would serve as an exchange program to allow the FBI to gain expertise from that foreign representative.

Section 605 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 guaranty, 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 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(a) amends section 624(c) of title 10, United States Code, to delete the requirement for Senate confirmation for appointment to the next higher grade of certain officers on the active duty list who are involved in classified intelligence operations and approved by the President for appointment to grades below O-7 (Brigadier General or Rear Admiral (lower half)).

At present, military officers participating in classified intelligence operations who are otherwise eligible for promotion must, in order to obtain Senate confirmation for promotion to grades above captain or, in the case of the Navy, lieutenant, be identified publicly by name during the confirmation process. Because of this public scrutiny, the officers and the operations themselves may be endangered. As a result, many qualified, dedicated officers recommended for promotion have been, in the interests of national security, unable to be promoted and have lost the corresponding increases in pay and allowances and other privileges and benefits of the higher grade.

This section amends section 642(c) to empower the President to appoint such officers to grades below O-7 (Brigadier General or Rear Admiral (lower half)) after the Secretary of Defense has approved the use of a secure promotion list and the appropriate Service Secretary has determined that the procedures in section 624(c) [redesignated as section 624(c)(1)] would either endanger the officers or compromise the operations in which they are involved, or both. The Secretary of Defense would report at least annually to the Senate and House Armed Services Committees the number of officers so appointed and the grades to which they are promoted.

Section 701 (b) provides that the amendments to section 624(c) are effective on the date of its enactment, but provides for authority to apply the provisions of section 624(c)(2) to any officer recommended for promotion by a selection board convened under chapter 61 (to include a special selection board convened under section 628(a)(1)) on or after September 15, 1981, but who has not been promoted because of concerns that the public scrutiny inherent in the confirmation process would compromise a classified intelligence operation or be dangerous to the officer.

The section further provides for the establishment of retroactive effective dates of promotion for all purposes and establishment of a date of rank and position on the active duty list that such officers would have received had their names been included on the list from which the officer was excluded, and that list was approved by the President and forwarded to the Senate. It may be that a date of rank and position on the active duty list established under this section will result in a situation in which, had the officer originally been promoted under section 624(c) and received that date of rank and position on the active duty list, that officer subsequently would have been within a promotion zone established by the Secretary concerned under section 623 for promotion to the grade next above that to which the officer had been recommended but not promoted to because of security concerns. Section 701(b) provides that such officers, upon promotion under that

section, are, if otherwise eligible, further eligible for consideration by a special selection board convened under section 628(a)(1). If recommended by that selection board for promotion to a grade below brigadier general or rear admiral (lower half), the officer could again be promoted under the procedures established by section 701(a) of this Act, with a date of rank, an effective date for the pay and allowances of that grade, and a position on the active duty list determined under section 628(d)(2).

Section 701(b)(a) further provides that the officers promoted under that section shall not, during the fiscal year in which their promotion is accomplished, be counted against any strength in grade limitation established by law. This section further provides that the Secretary of Defense shall include in the report required by section 701(a) of this Act the number of officers promoted under this section.

Section 701(c) provides that in the event that the appointment of an officer under chapter 61 in the grade in which that officer is currently serving was delayed because of participation in a classified intelligence operation, the Secretary concerned may adjust the date of rank, effective date of promotion for all purposes, and position on the active-duty list of that officer in order to obviate the seniority and pay consequences of that delay. Section 701(c) further provides that in the event that the officer would have been in a promotion zone to the next higher grade established by the Secretary concerned under section 623 had that officer been promoted without such delay, the officer, if otherwise eligible, is further eligible for consideration by a special selection board convened under section 628(a)(1). If recommended by that selection board for promotion to a grade below brigadier general or rear admiral (lower half), the officer could be promoted under the procedure established by section 701(a) of this Act, with a date of rank, an effective date for the pay and allowances of that grade and a position on the active-duty list determined under section 628(d)(2).

Section 701(d) establishes a procedure whereby the Secretary concerned may, in order to effectuate actions taken pursuant to sections 701(b) or (c), correct the records of the officers concerned without reference to a Board established under section 1552 and without application by the officers concerned. Such a correction is binding upon all officers of the United States, and, since a retroactive or adjusted effective date of promotion would entitle the officer concerned to back pay and allowances, such a correction would authorize the expenditures, from applicable current appropriations, for such pay and allowances.

Section 701(e) establishes an expiration date of September 30, 1987 for the authority provided by section 701(b) - (d) to take corrective actions in the case of officers who were not promoted or whose promotions were delayed because of security concerns. Since section 701(a) provides a permanent mechanism to effectuate the future promotion of officers engaged in classified intelligence operations whose promotions have not as of the date of this Act, been effected by security concerns. The special corrective provisions of sections 701(b)(d) are not needed on a permanent basis.

Section 702 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 FY85, 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 OSD coordination. 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 703 addresses a provision included in the FY85 Intelligence Authorization Bill designed to markedly enhance Defense Intelligence Agency's (DIA) capabilities to structure attractive and flexible career opportunities for its civilian professional intelligence work force. This earlier legislation provided authorities parallel to those enjoyed by the Central Intelligence Agency and the National Security Agency, thereby eliminating a major disadvantage that had affected DIA's ability to attract top quality careerists. The operative effect of the legislation was to exempt DIA from the requirements of the Classification Act, allowing DIA to factor in the individual circumstances of the person in the job in determining grade and revise standards to reflect the changing intelligence environment of the second half of the 1980's and the 1990's. In addition, the legislation facilitated the separation of civilian employees when such separation is deemed to be in interests of the United States and consistent with the national security.

Section 703 is intended to improve the management of civilian intelligence personnel within the military departments and to correct actual personnel management system inequities and disparities existing within the Department of Defense intelligence community. Notwithstanding the fact that the military departments' intelligence collection and production requirements have become more and more demanding and the military departments exercise varying degrees of intelligence collection and production responsibilities as vital contributors to the Intelligence Community-wide intelligence effort, they continue to labor under the restrictions of the Classification Act. That Act hinders the military departments' efforts to create viable and competitive professional alternatives for their civilian intelligence officers and employees. With regard to their civilian intelligence officers and employees, the military departments simply do not have the flexibility in personnel matters enjoyed by CIA, NSA, and DIA under applicable statutes. As a consequence, the military departments have been significantly handicapped in their ability to recruit and reward outstanding analysts and other intelligence specialists and employees, and otherwise to operate an equally effective civilian personnel system. Consequently, military intelligence management of the collection, processing, analysis, and dissemination processes is at a decided disadvantage. As a functional equivalent within the defense and national intelligence communities, the need exists for equivalent intelligence management and functional authorities to be vested in and retained by the military departments. Enactment of this legislative proposal will allow the military departments to create a flexible, viable, and attractive civilian personnel management system.

Specifically, enactment of this legislative proposal would create conditions that would promote continuous modernization of military intelligence civilian position classification and qualification standards to keep pace with: intelligence consumer expectations for increased quantity and enhanced quality of intelligence products; the impact of new technologies and initiatives upon intelligence management, collection, processing, and dissemination methodologies; and, Service intelligence reorganizations that are driven by emerging intelligence collection and production imperatives. Moreover, enactment of these provisions would allow the Services to implement de facto multi-tracked career and training programs for its civilian intelligence officers and employees and invest "rank in the person" rather than in the job in which the civilian intelligence officer or employee serves as the incumbent.

All of the authority vested in the Secretary of Defense by P.L. 98-618 with regard to the Defense Intelligence Agency remains unchanged. This legislative proposal represents a straight forward extension of 10 U.S.C. 1604 authorities to the military departments.

The effect of amendments to 10 U.S.C. 1604 (a) through (e), as outlined above, would be to authorize the Secretary of Defense, delegable only to the Secretaries of the military departments, to establish a flexible personnel management system for those personnel who are not in the Senior Executive Service of the military departments. The phrase "civilian intelligence officers employees" encompasses those individuals who perform an intelligence function, i.e., the majority of the incumbent's time is spent advising, administering, supervising, performing, or supporting work in the collection, processing, analysis, production, evaluation, interpretation, dissemination or estimation of intelligence information, or in the planning, programming, and management of intelligence resources. Salaries and pay of such individuals would be fixed in relation to the General Schedule and Wage Grade (prevailing rate) system. A flexible classification system would be established which would incorporate the concept of both position classification and rank in the person. The system would be structured to permit assignment, movement, and career development without cumbersome classification and related administrative procedures.

Subsection 703(a) contains a number of amendments to U.S.C. 1604. It amends 1604(a) to authorize the Secretary of Defense to establish civilian intelligence positions in the military departments and to appoint individuals to such positions, without regard to civil service requirements.

Subsection 1604(b) is amended to authorize the Secretary of Defense to fix pay for positions established under subsection (a) in relation to the General Schedule (GS) rates.

Subsection 1604(c) is amended to authorize a prevailing rate system of basic compensation for positions in or under which the military departments may employ individuals in a trade, craft, or manual occupation.

Subsection 1604(d) is amended to authorize additional compensation for civilian intelligence officers and employees of the military departments stationed outside the continental United States or in Alaska at rates not to exceed those authorized by 5 U.S.C. 5941(a). Such allowance shall be based on living costs substantially higher than in the District of Columbia or conditions of environment which differ from those in the continental United States.

Subsection 1604(e) authorizes the Secretary of Defense to delegate the authority contained in Subsection 10 U.S.C. 1604(a) through (d) to the Secretaries of the military departments for purposes of taking appropriate civilian personnel management actions with respect to civilian intelligence officers and employees of the military departments.

Newly designated subsection (f) of section 1604 as amended by 703(a) of the bill, authorizes the Secretary of Defense, during fiscal years 1987 and 1988, to terminate employment of any civilian intelligence officer or employee of the military departments 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 law that authorize the termination of such employment cannot be invoked in a manner consistent with the national security. Termination authority may be delegated only to the Secretaries of the military departments. Termination action would be appealable to the Secretary of Defense whose decision would be final.

Subsection (f) is designed to facilitate, while preserving basic due process, the removal of personnel whose performance or security suitability is demonstrably unsatisfactory or unacceptable, or who are otherwise impairing the effective performance of the military departments' intelligence mission. The intelligence environment requires suitability and unusually high standards of performance to ensure the accuracy and reliability of intelligence product. Tolerance of unsatisfactory performance or security suitability is necessarily low. The flexibility granted by this provision would relieve the military departments from the external public review procedures to which preference eligible individuals would otherwise be entitled upon appeal to the Merit Systems Protection Board. The termination system instituted under subsection (f) would provide strict safeguards to assure internal appeal to the Secretary of Defense thereby ensuring equity and consistency. The Secretary of Defense is required to notify the intelligence committees of each instance in which the termination authority is exercised. The termination authority is limited in duration. It is so designed to provide an opportunity to assess the use made of the authority during a two year period in order that an informed decision can be made as to whether the authority should be made permanent.

Section 704 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, such as gravimeters and doppler satellite tracking gear, 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, either directly by DMA or through surrogate 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 U.S. saves a good deal of money by the use of foreign locals rather than sending U.S. persons to do the job. In the exchange, the U.S. gets significant raw mapping data as well as access to the territory of another sovereignty. Some executive agreements even provide for the acquisition of new mapping data through surrogate countries. Over the years this has been a low cost, reliable and convenient way for DMA to fulfill its intelligence mandate. It should also be emphasized that in many instances that 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. Public law (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 705 provides the Defense Intelligence Agency (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. 99-45, but the medical evacuation authority was again omitted. 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 706(a) amends chapter 57 of title 10, United States Code, to authorize members of the armed forces to accept cash awards for exceptional performance of duty while engaged in the collection or reporting of sensitive foreign intelligence information. Under the Intelligence Exceptional Collector National HUMINT Award Program established by the Director of Central Intelligence Community in March 1985, each component of the Intelligence Community is authorized to nominate military or civilian personnel (a maximum of four each fiscal year) whose achievements constitute either extraordinary intelligence reporting or particularly fruitful collection activities directly affecting United States national security policy. Nominees approved by the Director of the Intelligence Community Staff and the Director of Central Intelligence may receive awards of up to \$5000.

Section 5536 of title 5, United States Code, prohibits Federal civilian employees or military personnel from accepting additional pay or allowances for performing their official duties unless the disbursement is specifically authorized by law. Section 4503(2) of title 5, United States Code, provides the authority to make incentive awards to civilian employees who perform special acts or services in connection with their official employment. In contrast, cash awards to military personnel are limited to those recognizing individuals whose "suggestion, invention or scientific achievement contributes to the efficiency, economy or other improvement of operations or programs relating to the armed forces." (10 U.S.C. 1124(a)).

Thus, under existing law, civilian employees may accept cash awards under the Intelligence Community Exceptional Collector National HUMINT Award Program, but military personnel may not. Enactment of this proposal will eliminate the disparity in treatment of civilian and military personnel engaged in the collection and reporting of foreign intelligence.

Subsection 706 (b) authorizes payment of cash awards for achievements while on active duty in the armed forces even if the member dies, separates or retires before approval of the award.

TITLE VIII

RESTRICTIONS ON ASSISTANCE TO FOREIGN POWERS BY FORMER INTELLIGENCE OFFICERS OR EMPLOYEES

Section 801 would amend the National Security Act of 1947 to prohibit former officers and employees of the U.S. Intelligence Community from assisting foreign powers in certain circumstances without approval.

I. Purpose of Legislation

The purpose of this legislation is to preserve and promote the integrity of former members of the United States Intelligence Community, to maintain and enhance the confidence of the public in the Intelligence Community, to avoid real and apparent conflict of interest and to protect intelligence-related information from disclosure.

This bill would amend the National Security Act of 1947 as follows:

a. Employees within the Intelligence Community would be barred for a period of two years from directly or indirectly accepting employment, entering into any advisory, financial or other relationship with a designated foreign power without written approval to do so; or providing guidance, advice or information concerning intelligence, or information derived from or directly related to an officer's or employee's former position within the Intelligence Community to a designated foreign power without written approval to do so;

b. Heads of departments or agencies could exempt classes of employees from this prohibition;

c. Nonexempt employees would be required to seek approval from their former employing agency, and the head of the agency could in his or her discretion approve or disapprove such application;

d. Employees who had been granted approval to enter into such arrangements would have a continuing duty to inform their former agency of their status with the foreign power;

e. This title would provide for criminal penalties of not more than \$10,000, or imprisonment for no greater than two years for violation of the Act's provisions;

f. This title would also provide for injunctive relief to compel former employees to comply with its provisions.

g. Each agency within the Intelligence Community would be required to promulgate regulations to carry out the provisions of the Act;

h. This title would have extraterritorial jurisdiction;

i. For the purpose of this title, a designated foreign power is defined to include all foreign countries, foreign political parties, all governments in exile and would include any quasi-governmental, international or multinational organization.

II. Need for Legislation

Existing conflict of interest statutes, post-employment restrictions, espionage statutes and contractual secrecy agreements binding members of the intelligence community fail to provide adequate safeguards to insure that former officers and employees of the intelligence community do not enter into damaging relationships with foreign powers. The post-employment restrictions found in 18 U.S.C. 207 merely prohibit a former employee from taking a representational role on behalf of another in regard to specific matters in which he, or employees under his supervision, had personal and substantial involvement as a government employee. Although the espionage statutes prohibit the unauthorized disclosure of classified information, they do not prohibit relationships which might lead to the disclosure of information, nor do they prohibit the disclosure of unclassified, yet sensitive and damaging information. Contractual secrecy agreements with former

employees require only that employees submit materials for prepublication review, and at best provide for relief under principles of contract law. As a result, former employees of the intelligence community are free to enter into employment and advisory relationships with real or potential hostile powers, and, if they are willing to risk uncertain civil penalties, share unclassified yet non-public and sensitive intelligence information with hostile powers, and trade in intelligence-related professions when it is not in the interest of the United States for them to do so.

Recent incidents evidence a need for remedial legislation:

- Former intelligence employees Edwin Wilson and Frank Terpil established consulting and commercial relationships with hostile governments shortly after their departure from the government. In both cases, they apparently gained their initial footholds on the basis of their recent employment by United States Intelligence

- A former CIA analyst served as an "expert witness" before the World Court, supporting the Nicaraguan Government's claim against the United States. His testimony was carefully crafted to exclude references to classified information and couched as "extemporaneous statements" to avoid prepublication review.

- Two former members of the Army's Delta Force were approached by representatives of a Honduran junta to provide security services. The two former officers were initially unaware that the group represented a political faction which was planning to assassinate the President of Honduras. Although in this case the former officers were entirely blameless, their apparent availability placed them in a potentially compromising position.

In each of these cases, a temporary bar on employment or advisory relationships with foreign powers could have delayed or possibly thwarted potentially damaging relationships. At the minimum, this legislation would assure the public that such relationships should not exist in the future, and thus enhance public faith in government.

a. Need for a Two-Year Ban

Intelligence information, both raw intelligence and information concerning intelligence methodologies, has both a temporary and long-term value. This bill attempts to minimize the potential harm to the United States while minimizing the intrusion into the post-employment activities of former intelligence officers by addressing the temporary component.

We believe that it is necessary to place controls on the trafficking of information and skills of immediate value for purposes of obtaining employment or financial gain with a foreign power. Accordingly, although the bill would permit former employees to eventually seek employment with or establish relationships with foreign powers, situations which present the potential for the most serious damage would be subject to approval and control.

From the viewpoint of an employee who plans to establish a benign or positive relationship with a foreign power, the bill would create only a minor intrusion into his private affairs, requiring approval for only a two-year period.

b. Need for Exemptions for Classes of Employees

The bill is intended to restrict the post-employment activities of employees whose particular skills or access to information could be exploited by hostile governments. It is likely, however, that some classes of employees of the Intelligence Community would pose no current or potential threat to the national interest. In order to avoid an unnecessary and unwarranted restriction on the post-employment activities of these employees, and to avoid clogging the approval mechanism with unnecessary paperwork, we believe that the legislation should permit exemption of classes of employees, and that a decision to waive the reporting requirements should be left to the discretion of each agency head.

c. Need for Discretionary Authority to Approve or Disapprove Requests

Absolute discretionary authority to approve or disapprove requests is an essential element of this legislation. Because of the temporal value of relationships based on former intelligence service, agencies must have the authority to bar such relationships, free from the prospect of delay arising out of administrative appeal and judicial review. Decisions as to what relationships might constitute dangers to the national security are properly left to the heads of intelligence agencies who have access to, and knowledge of, information concerning the potential threat posed by the employment under consideration, the details of the employee's duties and access to information, and an appreciation and understanding of how the two interrelate. Just as intelligence heads have the sole discretion to identify intelligence sources (see, U.S. vs Sims) it is essential that they have the non reviewable authority to identify and bar potential threats to those intelligence sources and methods.

d. Need for Continuing Duty to Report

Because a change in the specific activities of an individual, or a change in scope of his activities could affect the determination as to whether a relationship poses a threat to the Intelligence Community, former employees must have an obligation to report material changes in the circumstances surrounding their relationship with a foreign power. In order to insure timely transmittal of this information, these reports must be made promptly.

e. Need for Both Criminal Penalties and Injunctive Relief

Because relationships with foreign powers offer significant financial rewards, and because certain relationships may result in serious damage to the national security, civil damages would be ineffective and inappropriate for violations of the bill's approval and reporting requirements. However, because damage once done could not be repaired, we also see a need for injunctive relief to enjoin a former employee from entering into non-approved relationships. We also see a need for civil remedies to provide a means to both obtain information and to provide a mechanism to assure that the statute is carried out as written.

f. Need for Extraterritorial Jurisdiction

By their very nature, relationships with foreign powers are likely to have been created and maintained outside of the territory of the United States. Extraterritorial jurisdiction is necessary to reach the majority of acts which the legislation seeks to control.

II. Section-by-Section Analysis

Subsection 801(a) establishes a new requirement for employees of the Intelligence Community to obtain approvals to engage in certain activities during the first two years following their separation from an agency within the Intelligence Community. A former employee would be required to seek advance approval before directly or indirectly entering into the following:

Employment with a foreign power, an advisory relationship with a foreign power, a financial relationship with a foreign power; or;

providing aid, services or assistance to a foreign power, or;

providing guidance, assistance or information to a foreign power concerning intelligence, or information derived from or directly related to his former position within the Intelligence Community.

Under this section, former employees would be required to seek advance approval before they negotiated for employment with a foreign power, before supplying any consultative services to a foreign power, or before serving as a paid or unpaid spokesman or witness for a foreign power.

Subsection (b) exempts officers or employees of the government who act in the course of their official duties.

Subsection (c) authorizes each head of an intelligence agency to waive the provisions of subsection (a) for any particular person or class of persons. The agency head's actions are discretionary and nonreviewable.

Subsection 802(a) establishes the requirement to seek prior approval to enter into relationships or engage in activities otherwise prohibited by section 801. Section 802(a) defines the reporting requirement and sets forth the minimum information required to be included in a request for approval.

Subsection (b) establishes the criteria for approval: that an activity will not involve the unauthorized disclosure or use of classified information and that it will not be inconsistent with national security. The authority to approve is discretionary with the agency head, not reviewable, not appealable.

Subsection (c) states that approval to engage in an activity does not affect any potential civil or criminal liability. Accordingly, application of the conflict of interest statutes, 18 U.S.C 201-209 is not affected, nor are secrecy agreements between the government and its former employees.

Section 803(a) establishes a continuing duty to report for each year during which a financial relationship or activity continues. This duty to report extends only through the first two-year period following separation from the intelligence community.

Subsection (b) establishes a duty to report material changes in the circumstances affecting the relationship or activity and requires former employees to file such reports within 10 days of the occurrence of a change in circumstances. On review of the updated report, the head of the agency involved may require the former employee to reapply for approval to engage in the relationship or activity. If the head of the agency declines to approve the activity, the employee must terminate the activity within 10 days.

Subsection (c) establishes the requirement to file a termination report within 30 days of the termination of a financial relationship or activity. Subsection (d) sets forth the authority of the agency head to require employees to provide additional information to permit him to carry out the provisions of the bill.

Subsection 804(a) defines a continuing offense for failure to file reports required by section 803.

Subsection (b) defines as unlawful the making of false, or untrue statements or the omission of material facts.

Subsection (c) defines as unlawful the omission of required information.

Subsection 805(a) establishes criminal penalties for willful violations of sections 801, 802(a), 803, and 804. This subsection permits a defendant to claim as a defense that he had no actual knowledge of the bill's requirements.

Subsection (b) sets forth jurisdiction in the district courts for injunctive relief to require compliance with the bill's reporting requirements or compliance with any of the bill's other provisions. The intent of this section is to permit the district court to enjoin a former employee from entering into or continuing an unapproved activity. Proceedings under this subsection will be expedited by the court.

Section 806 requires the various agencies to issue regulations to carry out the provisions of the bill.

Section 807 establishes extraterritorial jurisdiction. Jurisdiction is conferred on the district court over citizens and permanent resident aliens.

Section 808 provides definitions. For the purpose of the bill, "intelligence agency" includes executive intelligence agencies, and the Senate Select Committee on Intelligence (SSCI) and House Permanent Select Committee on Intelligence (HPSCI). The term "designated foreign power" is defined to include foreign governments, all political subdivisions of such governments, political parties of foreign governments, governments in exile, international or multinational organizations composed of foreign governments, or an agent or representative of a foreign government.

TITLE IX

UNAUTHORIZED DISCLOSURES OF CLASSIFIED INFORMATION

Section 901 adds a new section to the National Security Act of 1947 (50 U.S.C. 401 et seq.) prohibiting certain unauthorized disclosures of classified information.

Proposed Section 901 provides criminal penalties for willful unauthorized disclosure of classified information by current or former federal employees and others, such as government contractors, who have or have had authorized access to classified information. With the narrow exceptions of unauthorized disclosures of atomic energy Restricted Data, communications intelligence and cryptography information, and the identities of covert agents, willful unauthorized disclosures of classified information by those entrusted with it by the government are not per se offenses under existing federal criminal statutes.

Subsection (a) of 901 prohibits willful disclosure or attempted disclosure of classified information, by a federal civilian or military officer or employee or other person with authorized access to such information, to any person who is neither a federal civilian or military officer or employee nor a person with authorized access to such information. The subsection provides criminal penalties of not more than five years imprisonment or a \$25,000 fine, or both, for each violation.

Subsection (a) also prohibits unauthorized disclosures by persons who previously have been officers or employees of the United States, and to persons who have had authorized access to classified information. This retroactive feature is important to ensure that criminal liability under the proposed section is not evaded by an individual who begins to make unauthorized disclosures after government service or authorized access has ceased.

Subsection (b) of 901 applies to a current or former federal civilian or military officer or employee, and to any other person who has or has had authorized access to classified information, who aids or abets another such person in the unauthorized disclosure of the information, directly or indirectly such as through a chain of intermediaries, to a person who is neither a federal civilian or military officer or employee, nor a person with authorized access to the classified information. The criminal penalties for such an offense are identical to those provided for the offense defined in subsection (a).

Subsection (c) of 901 provides definitions for terms employed in subsections (a) and (b). Subparagraph (i) defines "classified information" to consist of information or material that has been determined by the United States Government to require protection against unauthorized disclosure for reasons of national security pursuant to a statute, Executive Order, or litigation. It is intended that prosecutions would be barred unless a person has clear notice or reason to believe the information disclosed was classified. Subparagraph (ii) defines the term "disclose," or "discloses," to include all forms of disclosure enumerated in the existing provisions of 18 U.S.C. 793-798 and 50 U.S.C. 426, 783. Subparagraph (iii) defines the term "authorized access" to include authority or permission to receive information within the scope of authorized government activities or pursuant to the routine security clearance processes of the Executive branch, orders of the courts of the United States, or rules of either House of Congress.

Subsection (d) of 901 assures that no criminal liability will attach under subsections (a) or (b) to otherwise lawful disclosures of classified information to the Congress or the courts.

Subsection (e) (i) assures that no criminal liability will attach when the information previously has been disclosed publicly by U.S. government officials authorized to do so. Subsection (e) (ii) further permits a defendant to assert as a defense that the information disclosed was not information that was obtained as a result of employment or to which he or she had authorized access as defined in the bill. Subsection (e) (iii) allows a defendant to assert as a defense the good faith publication based upon prior U.S. Government review of the information pursuant to a request from the defendant for prepublication or declassification review. Prosecution would be barred if the defendant has submitted the information for review, pursuant to an express agreement providing for prepublication review or otherwise, and has been notified by the Government that it has no objection to the disclosure or declassification on national security grounds, or if the U.S. objection or denial of declassification has been overturned by a federal court decision that is final.

Subsection (f) is designed to ensure that no prosecutions may occur unless the Attorney General and the head of the department or agency with responsibility for the classified information concerned have certified that the information disclosed constitutes properly classified information. Such certifications shall be final and unreviewable, and shall be conclusive indication that the information constitutes information that properly meets the criteria for a specific level of classification under statute or Executive Order.

However, a defendant may challenge the propriety of the classification by showing that the information was available and obtained from public sources prior to the defendant's disclosure. In such cases, the United States shall be provided an opportunity to establish that the information nevertheless remained properly classified despite its availability from public sources, because it had not been officially disclosed or confirmed by the United States. A defendant also may challenge the classification by making a prima facie showing, based upon personal knowledge or otherwise admissible evidence, that the information was improperly classified by the U.S. at the time of the defendant's disclosure because it did not meet the substantive criteria for classification called for by applicable statute, order, or directive. It is intended by this subsection that, upon the requisite showing by a defendant, the United States shall justify the propriety of the classification, in camera ex parte, by showing the damage that, at the time of the defendant's disclosure, reasonably could be expected from disclosure. Thus, a prosecution could not be maintained under this section if a defendant discloses certain information that is available from public sources because of a prior unauthorized disclosure, unless the United States can establish that, at the time of the disclosure, the additional disclosure of the information or confirmation by a person with authorized access reasonably could be expected to cause damage to the national security. Further, no prosecution could be maintained if, after a prima facie showing by the defendant that classification was arbitrary or otherwise improper, the court rules in defendant's favor. Finally, the provision for in camera, ex parte consideration of the propriety of the classification is intended to permit the court to determine the issue without exposing additional classified information to persons not authorized to have access to such information. It is intended that the court's examination on the matter shall be de novo in accordance with the standards for review established under the Freedom of Information Act. The court's determination on this issue is to be conclusive on the propriety of the classification, and is a matter of law.

Subsection (g) provides the United States the right to an interlocutory appeal from any adverse ruling by the court on the propriety of the classification. This provision enables the issue to be resolved before submitting the case to trial, and parallels the provision for interlocutory appeal contained in the Classified Information Procedures Act. It is intended, moreover, that the provisions of that Act also will be available to ensure the protection of classified information from unauthorized disclosure.

Subsection (h) provides that prosecutions may be commenced even if the disclosure that provides the basis for prosecution under the bill is made outside the territorial jurisdiction of the United States.

TITLE X

GENERAL PROVISIONS

Section 1001 makes clear that, with the exception of any specific legislative authorities which may be contained in the Intelligence Authorization Act for Fiscal Year 1986, the Act is intended only to authorize appropriations and does not constitute authority for the conduct of any intelligence activity prohibited by the Constitution or laws of the United States.

Section 1002 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 1987

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 104 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 the Central Intelligence Agency or the National Security Agency.

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 certifies that the decision will have an adverse impact upon the national security of the United States. 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: Amends the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) by adding at the end thereof the following new section:

Extra Credit for Service at Unhealthy Posts

SEC. 16. The provisions of subsection 251 (b) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) authorizing the Director of Central Intelligence to establish a list of unhealthy posts for which an extra retirement credit for service at such posts may be provided to an Agency employee who is a participant in the Civil Service Retirement and Disability System or in a new Government retirement system as defined in the Federal Physicians Comparability Allowance Act of 1978, as amended, in the same manner and to the same extent in the case of an Agency employee who is a participant in the Central Intelligence Agency Retirement and Disability System."

Section 404: (a) Amends the Central Intelligence Act of 1949 (50 U.S.C. 403a et seq.) 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) 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.

Section 405 (a): Amends the National Security Act of 1947 (50 U.S.C. 401 et seq.) by adding at the end thereof the following new section:

Section 1001. (a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 of the United States Code for claims for injury or loss of property, or personal injury or death, resulting from the negligent or wrongful act of omission of any officer or employee of the Intelligence Community while acting within the scope of his office or employment shall hereafter be exclusive of any other civil action or proceeding, arising out of or relating to the same subject matter, against the officer or employee whose act or omission gave rise to the claim, or against the estate of such officer or employee.

(b) The United States shall be liable, to the extent that liability for such tort is recognized or provided by applicable Federal law, for claims for money damages sounding in tort arising under the

Constitution of the United States resulting from an act or omission of any officer or employee of the Intelligence Community while acting within the scope of his office or employment. Such claims shall be treated in the same manner as claims cognizable under section 1346(b) and 2672 of title 28 of the United States Code. The remedy against the United States provided by this subsection shall hereafter be exclusive of any other civil action or proceeding, arising out of or relating to the same subject matter, against any officer or employee whose act or omission gave rise to any employee. This remedy shall be deemed an equally effective substitute for any recovery against the officer or employee in his individual capacity directly under the Constitution. The United States shall not be liable for interest prior to judgment or for punitive damages.

- (c) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) and (b) of this section (or the estate of such person) for any such claims. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or any attested true copy thereof to such person's immediate superior or to whomever was designated by the Federal agency, which employed the individual at the time of the alleged act or omission that gave rise to the action or proceeding, to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney

General and to the head of that Federal agency.

- (d) Upon certification by the Attorney General that the defendant officer or employee was acting within the scope of his office or employment at the time of the incident out of which the action arose, any civil action or proceeding commenced in the United States district court shall be deemed an action against the United States under the provisions of title 28 of the United States Code and all references thereto, and the United States shall be substituted as the party defendant.
- (e) Upon certification by the Attorney General that the defendant officer or employee was acting within the scope of his office or employment at the time of the incident out of which the action arose, any civil action or proceeding described in subsection (c) which is commenced in a State court shall be removed, without bond, at any time before trial, by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action shall be deemed an action brought against the United States under the provision of title 28 of the United States Code and all references thereto, and the United States shall be substituted as the party defendant. The certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.
- (f) In any civil action or proceeding brought under this section, the United States shall have available all defenses heretofore available to the officer or employee whose act or omission gave rise to the claim, and all defenses to which it would have been entitled if the action had originally been commenced against the United States under section 1346(b) and sections 2671 through 2680 of title 28 of the United States Code, except that section 2680(k) shall not apply to any cause of action covered by this section.

(g) The Attorney General may compromise or settle any claim asserted in any such civil action or proceeding in the manner provided in section 2677 of title 28 of the United States Code, and with the same effect.

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. "Foreign intelligence" means information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons, but not including counterintelligence except for information on international terrorist activities.

d. "Counterintelligence" means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassination conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

e. "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. Subject to the availability of appropriations, 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. Oversight.

The Secretary of Defense shall establish a system to ensure oversight of and accountability for the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

SEC. 396. General Provisions.

a. The intelligence support activities authorized pursuant to sections 393 and 394 may be conducted only in accordance with regulations promulgated by the Secretary of Defense.

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 and shall ensure that the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence are kept fully and currently informed of such activities, as prescribed in section 413 of Title 50.

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) as follows:

(a)(1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 of this title) shall apply to the production and disclosure of financial records pursuant to requests from[--

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B)] the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90-331, as amended).

(b) Amends Section 1114 by adding at the end thereof the following:

(c) (1) 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;

(2) A request for access to, or copies of, financial records, for foreign intelligence or counterintelligence purposes, by a Government authority authorized to conduct such activities, shall include the certificate required in section 3403(b) of this Title, signed by a supervisory official of a rank designated by the head of the Government authority.

(3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5) The provisions of sections 3415, 3417, 3418 and 3421(b) shall apply to requests made pursuant to this subsection."

Section 602: Amends section 6103(i) of title 26, United States Code by adding at the end thereof the following new paragraph:

(8) Federal Bureau of Investigation Counterintelligence Activities -- Upon a determination by the Attorney General of his designee that there is probable cause to believe that a taxpayer is a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)), the return of the taxpayer and return information which relates to such taxpayer shall, upon request for foreign counterintelligence purposes by the Federal Bureau of Investigation approved by the Attorney General, be open (to the extent of the approved request) to inspection by,

or disclosure to, the Federal Bureau of Investigation. The Federal Bureau of Investigation is authorized to transfer taxpayer information obtained pursuant to this subsection to another federal agency or department when it is relevant to foreign counterintelligence matters within the jurisdiction of that agency or department.

Section 603(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) 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) 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.

(c) 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, when the information is relevant to foreign counterintelligence responsibilities of such agency.

(b) Amends the table of contents for chapter 33 of Title 5, United States Code by adding at the end thereof the following:

538. Access to Telephone Toll Records.

Section 604: No substantive change

Section 605(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, or 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 Section 624 of title 10, United States Code as follows:

(c)(1) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain or lieutenant (junior grade) or lieutenant shall be made by the President alone.

(c)(2) Upon a determination by the Secretary concerned that the appointment procedures in subsection (c)(1) may be harmful to the safety or well-being of an officer because of that officer's participation in classified intelligence operations or that such procedures with respect to a specific officer could compromise an ongoing classified intelligence operation,

the Secretary of Defense shall approve the use of a secure promotion list for the appointment of affected officers and shall present such list to the President. The President alone may appoint the officers on that list in grades below brigadier general or rear admiral (lower half). The Secretary of Defense shall report on the number of officers promoted under this paragraph and the grades to which promoted at least once a year to the Committees on Armed Services of the Senate and House of Representatives.

Section 702: Amends paragraph 1604(e)(1) of chapter 83 of title 10, United States Code, to extend the termination authority granted to the Secretary of Defense in this paragraph two additional fiscal years 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 703: Amends chapter 83 of Title 10, United States Code, as follows:

CHAPTER 83--DEFENSE INTELLIGENCE AGENCY CIVILIAN PERSONNEL AND CIVILIAN INTELLIGENCE OFFICERS AND EMPLOYEES OF THE MILITARY DEPARTMENTS

(a) The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees-

(1) establish such positions for civilian officers and employees in the Defense Intelligence Agency and such positions for civilian intelligence officers and employees of the military departments as may be necessary to carry out the functions of such Agency and departments;

(2) appoint individuals to such positions; and

(3) fix the compensation of such individuals for service in such positions.

(b) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay provided in the General Schedule under section 5332 of title 5 for positions subject to such schedule which have corresponding levels of duties and responsibilities. Except in the case of an officer or employee of the Defense Intelligence Agency or a civilian intelligence officer or employee of the military departments serving as a member of the Defense Intelligence or Military Department Senior Executive Service, no officer or employee of the Defense Intelligence Agency or civilian intelligence officer or employee of the military departments may be paid basic compensation at a rate in excess of the highest rate of basic pay contained in such General Schedule.

(c) The Secretary of Defense is authorized, consistent with section 5341 of title 5, to adopt such provisions of such title as provide for prevailing rate systems of basic pay and to apply such provisions to positions in or under which the Defense Intelligence Agency or the military departments may employ individuals described by section 5342 (a)(2)(A) of such title.

(d) In addition to the basic compensation payable under subsection (b), officers and employees of the Defense Intelligence Agency or civilian intelligence officers and employees of the military departments who are citizens or nationals of the United States or in Alaska may be paid compensation, in accordance with regulations prescribed by the Secretary of Defense, not in excess of an allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute. Such allowances shall be based on-

(1) living costs substantially higher than in the District of Columbia;

(2) conditions of environment which differ substantially from conditions of environment in the continental United States and warrant an allowance as a recruitment incentive; or

"(3) both of the factors described in paragraphs (1) and (2).

(e) With respect to the military departments, the Secretary of Defense may delegate authority under this subsection only to the Secretaries of the military departments.

(f) (1) Notwithstanding any other provision of law, the Secretary of Defense may, during fiscal years 1985 and 1986, terminate the employment of any civilian officer or employee of the Defense Intelligence Agency or may, during fiscal years 1987 and 1988, terminate the employment of any civilian intelligence officer or employee of the military departments 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 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.

(2) Any termination of employment under this subsection shall not affect the right of the officer or employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the Director of the Office of Personnel Management.

(3) With respect to the Defense Intelligence Agency, the Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense or the Director of the Defense Intelligence Agency or both. An action to terminate any civilian officer or employee by either such officer shall be appealable to the Secretary of Defense.

(4) With respect to the military departments, the Secretary of Defense may delegate authority under this subsection only to the Secretaries of the military departments. An action to terminate any civilian intelligence officer or employee by the Secretary of any military department shall be appealable to the Secretary of Defense.

Section 704(a): Chapter 167 of Title 10, United States Code is amended 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, under such regulations as are deemed appropriate, authorize the Defense Mapping Agency to

exchange or furnish mapping, charting or geodetic data, supplies or services to a foreign country or international organization pursuant 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 705: 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 purposes 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 706: Amends Chapter 57 of title 10, United States Code, by inserting after section 1124 the following new section:

§1124a. Cash awards for exceptional foreign intelligence collection

(a) Under regulations promulgated by the Director of Central Intelligence, a member of the armed forces may accept a cash award made in recognition of the member's exceptional performance while serving on active duty in collecting or reporting foreign intelligence information affecting the national security of the United States. A cash award under this section is in addition to the pay and allowances of the recipient.

(b) An award under this section may be paid notwithstanding the member's death, separation, or retirement from the armed force concerned.

(b) The table of contents at the beginning of chapter 57 of title 10 is amended by inserting after section 1124 the following new item:

§1124a. Cash awards for exceptional foreign intelligence collection

TITLE VIII

RESTRICTIONS ON ASSISTANCE TO
FOREIGN POWERS BY FORMER INTELLIGENCE OFFICERS
OR EMPLOYEES

SEC. 801. The National Security Act of 1947 is amended by adding at the end thereof a new title, Title VIII, to read as follows:

TITLE VIII

RESTRICTIONS ON ASSISTANCE TO FOREIGN
POWERS BY FORMER INTELLIGENCE OFFICERS
OR EMPLOYEES

801. Unlawful Assistance

(a) No person, having been at any time within the preceding two years an officer or employee of an Agency within the intelligence community, shall without written approval to do so from the intelligence agency which employed such individual: i) enter into (either directly or indirectly) any employment, advisory, financial or other relationship, whether paid or unpaid, with a designated foreign power; ii) provide aid, services or assistance to a designated foreign power; or, iii) provide guidance, assistance or information to a designated foreign power concerning intelligence or information derived from or directly related to an officer's or employee's former position with the Intelligence Community.

(b) Subsection (a) of this section shall not apply to an officer or employee of a department, agency, or independent establishment of the United States who enters into an employment, advisory, financial or other relationship with a designated foreign power or who provides aid, services or assistance to a designated foreign power in the course of official duties as such officer or employee.

(c) The head of an intelligence agency may in his discretion waive the applicability of subsection (a) of this section to any particular person, or class of persons, formerly employed by such agency, to whom subsection (a) would otherwise apply.

802. Required Reports

(a) A person seeking approval to enter into a relationship or engage in activities which would otherwise be prohibited by section 801 of this Title shall apply to the last intelligence agency which employed such person for approval and shall submit the following information:

- (i) the foreign power involved;
- (ii) The nature of the activity or relationship and anticipated duration of the activity or relationship;
- (iii) the identities of any persons on whose behalf the applicant will be acting in the course of the activity or relationship; and
- (iv) such other information as the head of the intelligence agency shall require to carry out this title.

(b) The head of an intelligence agency to which application is made in accordance with subsection (a) of this section may in his discretion grant approval to enter into a relationship or engage in a particular activity if he concludes that the relationship or activity: (i) will not involve the unauthorized disclosure or use of information classified pursuant to statute or Executive Order; and, (ii) will not be inconsistent with national security. The head of the intelligence agency may in his discretion place conditions upon the grant of approval consistent with national security. All grants of approval, including any applicable conditions, shall be in writing.

(c) A grant of approval in accordance with subsection (b) of this section shall not affect any potential civil or criminal liability, under any provisions of law other than the provisions of this title, of the person to whom approval is granted.

803. Continuing Duty To Report

(a) Every person granted approval to enter into a relationship or engage in an activity in accordance with section 802 of this Title and who continues to be subject to section 801 of this Title shall file with the intelligence

agency which granted the approval a report for each calendar year during the continuation of the financial relationship or activity. Such reports shall be filed within thirty days after the end of the calendar year.

(b) Every person granted approval to enter into a relationship or engage in an activity in accordance with Section 802 of this Title shall file a report of any material change in circumstances affecting the relationship or activity with the intelligence agency which granted the approval within ten days of the occurrence of such change. The head of the intelligence agency may in his discretion require a person reporting a material change to apply for a new grant of approval for the relationship or other activity in accordance with section 802 of this Title. If the head of the intelligence agency declines to grant a new approval in accordance with section 802 of this Title, the person who filed a report of a material change shall terminate the relationship or other activity within ten days after receiving actual notice that the head of the intelligence agency has declined to grant a new approval.

(c) Every person granted approval to enter into a relationship or engage in an activity in accordance with section 802 of this Title shall file a report within thirty days of the termination of the financial transaction or other relationship with the intelligence agency which granted the approval.

(d) Reports required to be filed by this section shall contain such other information as the head of the intelligence agency with which the report must be filed may require to carry out the provisions of this title.

804. False, Misleading, Or Missing Information

(a) It shall be unlawful to fail to file any report required to be filed by Section 803 of this Title. Such failure to file shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitations or other statute to the contrary.

(b) It shall be unlawful to make any false or untrue statement of material fact, or to omit a material fact necessary to make any statement made not misleading with respect to any material fact, in connection with the filing of any applications or reports required by this title.

(c) It shall be unlawful to omit from an application or report required by this title any information which the application or report is required to contain.

805. Enforcement And Penalties

(a) Whoever willfully violates section 801, subsection 802(a), section 803, section 804 of this Title, or any regulation issued in accordance with section 806 of this Title, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; but no person shall be subject to imprisonment under this subsection for the violation of any regulation if he proves that he had no actual knowledge of such regulation.

(b) Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Title, or regulations issued thereunder, or otherwise is in violation of the Title, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts, or for an order requiring compliance with any appropriate provision of the Title or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper. The proceedings shall be made a preferred cause and shall be expedited in every way.

806. REGULATIONS

The several heads of agencies within the Intelligence Community shall issue such regulations as may be appropriate to carry out the provisions of this title.

807. Extraterritorial Jurisdiction

There is jurisdiction over an offense or violation under this title committed outside the United States if the individual committing the offense or violation is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act)-8 USC 101(a)(20)).

808. Definitions

For purposes of this title:

- (1) The term 'intelligence agency' or 'agency within the Intelligence Community' shall mean: the Departments of State, the Treasury, Defense, and Energy; the Central Intelligence Agency; the Federal Bureau of Investigation; such other components of the United States Government as the President may designate as intelligence agencies or agencies within the Intelligence Community; the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence.
- (2) The term 'officer or employee' shall mean any person who is--
 - (a) employed by an intelligence agency or assigned or detailed to such agency and assigned to a component with responsibility for the conduct of: (i) foreign intelligence activities, (ii), counterintelligence activities, or (iii) special activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly;
 - (b) employed by the Central Intelligence Agency;
 - (c) employed by the Federal Bureau of Investigation;
 - (d) employed by the National Security Agency
 - (e) a Chief of mission or a member of the United States Foreign Service;
 - (f) A commissioned, warrant, or noncommissioned officer in the armed forces of the United States;
 - (g) a member of the armed forces who is assigned to the United States Army Special Forces; or
 - (h) a staff employee of the Senate Select Committee on Intelligence or the House Permanent Select Committee on Intelligence.
- (3) The term 'designated foreign power' shall mean:
 - (a) a government of a foreign country, a foreign political party, faction, entity or a government in exile of a foreign country;
 - (b) any unit of a foreign government, including any foreign national state, local and municipal government;
 - (c) any international or multinational organization whose membership is composed of any unit of foreign government; and,
 - (d) any agent or representative of any such unit or or such organization while acting as such."

TITLE IX

UNAUTHORIZED DISCLOSURE OF INTELLIGENCE
INFORMATION

Section 901: Amends the National Security Act of 1947 (50 U.S.C. 401 et seq.), by adding at the end thereof the following new sections:

SEC. 901. Unauthorized Disclosure of Classified
Information

- (a) Whoever, being or having been an officer or employee of the United States or a person having or having had authorized access to classified information, willfully discloses, or attempts to disclose, any classified information to a person who is not an officer or employee of the United States and who does not have authorized access to classified information, shall be fined not more than \$25,000, or imprisoned not more than five years, or both.
- (b) Whoever, being or having been an officer of employee of the United States or a person having or having had authorized access to classified information, willfully aids or abets the violation of subsection (a), shall be fined not more than \$25,000, or imprisoned not more than five years, or both.
- (c) As used in this section --
- (i) the term "classified information" means any information or material that has been determined by the United States Government pursuant to an Executive Order, statute or regulation to require protection against unauthorized disclosure for reasons of national security;
- (ii) the term "disclose" or "discloses" means to communicate, furnish, deliver, transfer, impart, provide, publish, convey, or otherwise make available;

- (iii) the term "authorized access" means having authority, right, or permission to receive classified information or material within the scope of authorized government activities or pursuant to the provisions of a statute, Executive Order, directive of the head of any department or agency who is empowered to classify information, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which governs the handling of classified information by the respective House of Congress.
- (d) Nothing in this section shall be construed to establish criminal liability for disclosure of classified information in accordance with applicable law to:
 - (i) any court of the United States, or judge or justice thereof; or
 - (ii) the Senate or House of Representatives, or any committee, subcommittee or joint committee thereof.
- (e) It is an affirmative defense to a prosecution under this section that:
 - (i) before the defendant's disclosure, the information that provides the basis for prosecution under this section officially had been disclosed publicly; or
 - (ii) the defendant did not obtain the classified information that provides the basis for prosecution under this section as a result of his duties as an officer or employee of the United States, or as a result of authorized access to classified information; or
 - (iii) the defendant has submitted the information that provides the basis for prosecution under this section to a department or agency of the United States for prepublication review, whether under a contract which provides for such review or otherwise, or

for declassification review pursuant to the provision of an Executive order, and (a) the United States informed defendant that it did not object to disclosure, or (b) the United States objected to such disclosure, or denied declassification and such objection or denial was overruled in a final opinion or ruling of a court of the United States.

(f) Prosecution under this section shall be barred unless, prior to the return of an indictment or the filing of any information, the Attorney General and the head of the department or agency responsible for the classified information jointly certify in writing that, at the time of the disclosure, the information constituted properly classified information. Such certification shall be conclusive as to the propriety of the classification except that, if a defendant demonstrates that the information that provides the basis for prosecution under this section was available from public sources or makes a prime facie showing that the information does not meet the substantive criteria for classification under applicable law, the prosecution may proceed if the United States establishes that the information, at the time of the disclosure, was properly classified because the particular disclosure reasonably could be expected to damage the national security. The court, based upon submissions of defendant and the United States, shall determine the information was properly classified. Upon request of the United States, the court's determination of the issue shall be in camera, ex parte. Any determination by the court on the propriety of the classification shall be de novo and a matter of law, and shall be conclusive except as provided in subsection (g) below.

(g) As interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of the court with respect to the propriety of the classification of the information that provides the basis for prosecution under this section.

(h) There is jurisdiction under this section over an offense committed outside the United States.

TITLE X

GENERAL PROVISIONS

Section 1001. No substantive change.

Section 1002. 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 .

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 .

TITLE IV

ADMINISTRATIVE PROVISIONS RELATED
TO INTELLIGENCE AGENCIES

Section 401: Cost analysis not applicable.

Section 402: Cost analysis not applicable.

Section 403: To be supplied by OP/CIA.

Section 404: Cost analysis not applicable.

Section 405: 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: Cost analysis not applicable.

Section 604: To be supplied by FBI.

Section 605: To be supplied by FBI.

TITLE VII - DOD ADMINISTRATIVE PERSONNEL
IMPROVEMENTS

Section 701: Since the military departments plan to use existing personnel offices to administer any programs developed after enactment, no additional civilian or military manpower

requirements are anticipated. Accordingly, it is estimated that any additional costs resulting from enactment of these provisions will be relatively small.

Section 702: Cost analysis not applicable.

Section 703: Since the military departments plan to use existing personnel offices to administer any programs developed after enactment, no additional civilian or military manpower requirements are anticipated. Accordingly, it is estimated that any additional costs resulting from enactment of these provisions will be relatively small. Such costs will be absorbed within authorized appropriation levels. It is hoped that such costs will be offset by efficiencies to be realized under new, less cumbersome procedures.

Section 704: Cost analysis not applicable.

Section 705: Cost contingent upon necessity to use prescribed authority.

Section 706: Would result in a maximum cost of \$140,000 per fiscal year if seven eligible Department of Defense organizations nominated the maximum number (4) of service members for awards each year and the recipients all received the maximum amount payable (\$5000).

TITLE VIII - RESTRICTIONS ON ASSISTANCE TO
FOREIGN POWERS BY FORMER INTELLIGENCE OFFICERS
OR EMPLOYEES

Section 801-08: Since the implementation of this title will be undertaken by existing offices of the Intelligence Community, no additional manpower requirements are anticipated. Accordingly, it is estimated that any additional costs resulting from enactment of these provisions will be relatively small.

TITLE IX

UNAUTHORIZED DISCLOSURES OF INTELLIGENCE INFORMATION

Section 901: Cost analysis not applicable.

TITLE X - GENERAL PROVISIONS

Section 1001: Cost analysis not applicable.

Section 1002: Cost contingent upon necessity to use prescribed authority.