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REMARKS

FYI only

Two Specter Bills:

S-1818: Inspector General

S-1820: Redining Role of DCI

DDA REGISTRY
FILE: 100-13

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By Mr. BIDEN (for himself, Mr. THURMOND, Mr. KENNEDY and Mr. HATCH):

S. 1822. A bill to make certain amendments to the Sentencing Reform Act of 1984 and to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes; placed on the calendar.

By Mr. STAFFORD (by request):

S. 1823. A bill to amend title 23, United States Code, to provide for the construction of new toll highways and for other purposes; to the Committee on Environment and Public Works.

By Mr. CRANSTON:

S. 1824. A bill to amend the Federal Aviation Act of 1958 to require that capacity levels be established at certain airports; to the Committee on Commerce, Science, and Transportation.

By Mr. BYRD (for Mr. CRANSTON (for himself and Mr. D'AMATO)):

S.J. Res. 209. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes; placed on the calendar.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KENNEDY (for himself, Mr. METZENBAUM, Mr. HATCH, Ms. MIKULSKI, Mr. PELL, Mr. DOLE, Mr. DODD, Mr. GLENN, Mr. CRANSTON, Mr. DURENBERGER, Mr. LAUTENBERG, Mr. SIMON, Mr. MOYNIHAN, Mr. CONRAD, Mr. MATSUNAGA, Mr. CHAFEE, Mr. KERRY, Mr. WEICKER, Mr. THURMOND, Mr. BURDICK, Mr. DECONCINI, Mr. LEVIN, Mr. ADAMS, Mr. WARNER, Mr. INOUYE, Mr. RIEGLE, Mr. BRADLEY, Mr. BOND, Mr. MITCHELL, Mr. PROXMIRE, Mr. DIXON, Mr. STAFFORD, Mr. NUNN, Mr. DOMENICI, Mr. GARN, Mr. SHELBY, Mr. PRYOR, Mr. D'AMATO, Mr. BENTSEN, and Mr. SANFORD):

S. Res. 303. A resolution to commend the efforts and commitment of the organizers and participants of "Justice For All Day," November 17, 1987; to the Committee on the Judiciary.

By Mr. LEAHY; from the Committee on Agriculture, Nutrition, and Forestry:

S. Res. 304. An original resolution to increase the amount allocated to the Committee on Agriculture, Nutrition, and Forestry by S. Res. 80 relating to committee funding for fiscal year 1988; to the Committee on Rules and Administration.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 305. A resolution to direct the Senate legal counsel to represent and to authorize the production of documents by Philip Q. Cohen in the case of Moreno versus Small Business Administration, et al.; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 1818. A bill to make requirements for the preparation, and transmittal to the Congress, of Presidential findings for certain intelligence operations; to provide mandatory penalties for deceiving Congress; and to establish an Independent Inspector General for the CIA; to the Select Committee on Intelligence.

NATIONAL SECURITY REFORM ACT

Mr. SPECTER. Mr. President, hearings before the Senate Intelligence Committee and joint hearings before the Select Senate and House Committees on the Iran/Contra matter have demonstrated the need for significant action in order to establish the appropriate role for congressional oversight pursuant to the checks and balances contemplated by the U.S. Constitution. Notwithstanding any action which may be taken by the President by way of Executive order on this issue, legislative change is necessary to impose statutory requirements governing this or future administrations where any such Executive orders might be countermanded.

This bill has four goals:

First, to encourage timely consultation with key Members of Congress to obtain the benefit of their insights to avoid future blunders like the transaction with Iran on arms for hostages;

Second, to provide for effective congressional oversight by specific statutory requirements establishing precise time limits for notice where the President decides not to consult in advance;

Third, to establish mandatory penalties where executive branch officials make false statements to congressional committees; and

Fourth, to add an Inspector General for the Central Intelligence Agency to help assure lawful internal compliance on matters which do not come within the purview of congressional oversight.

SECTION 2

Notwithstanding the obvious failure of the executive branch to provide requisite information to Congress under the provisions of existing statutes, some have argued that there was compliance because of the vagaries of current law. In order to prevent a repetition of such conduct, the National Security Act of 1947 (50 U.S.C. 413) and section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422), known as the Hughes-Ryan amendment, are made more specific by this bill. Existing law prohibits the expenditure of funds by the Central Intelligence Agency for covert activities "unless and until the President finds that each such operation is important to the national security of the United States." Efforts have been made to justify the CIA's action in the Iran/Contra matter by contentions that an oral finding was sufficient and that a later written finding could retroactively justify earlier covert action.

This bill unequivocally requires that the finding be in writing and that the President shall give notice and a copy of any finding to the House and Senate Intelligence Committees contemporaneously with the finding, but in no event later than 24 hours after it is made. A limited exception is provided for an oral finding in situations where the President deems that immediate action by the United States is required to deal with the emergency situation affecting vital national interests and time does not permit the preparation of a written finding. In that event, the finding must be immediately reduced to writing after the action is orally approved, with the written finding to be completed no later than 24 hours after the making of the oral finding.

Where an oral finding is used, there is the additional requirement that the written finding shall include a statement of the reasons of the President for having first proceeded with an oral finding. This bill further provides that a finding shall be effective only with respect to operations beginning after the finding was made by the President in order to preclude any contention that the finding may retroactively cover prior CIA operations.

These statutory requirements leave no room for doubt that no covert action may be undertaken without complying with the requirements of a written finding and the requisite notice, by any personnel of the executive branch or anyone acting on its behalf including foreign governments or any individual. This specific provision would preclude any future argument that the delivery of arms to Iran was legally justified, after the fact, by a retroactive finding or that other entities or actors were not bound by the same limitations affecting the CIA.

This bill further removes any possible ambiguity in section 501(b) of the President's obligation to notify the House and Senate Intelligence Committees of covert action. Section 501(b) now provides:

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

The phrase "for which prior notice was not given under subsection (a)" carries the direct implication that the House and Senate Intelligence Committees should have been "fully and currently informed" of covert activities which are covered by section 501(b). It is obvious that the President did not comply with section 501(b) to inform the Intelligence Committees in a "timely fashion" where some 14 months elapsed from the time of the first covert action on the Iranian arms sales to the time that information reached the Intelligence Committees. Yet, some have contended that the exigencies of the situation excused the President from giving earlier notice so that requirements of a "timely fashion" were observed.

This bill removes any room for such future arguments by requiring the President to give notice to the Intelligence Committees contemporaneously with any written or oral finding. In order to remove any conceivable ambi-

guity as to the meaning of "contemporaneously," a time certain is added requiring the information to be transmitted no later than 24 hours after the making of an oral or written finding. Absent the experience of the Iran/Contra matter, it would seem unnecessary to put a 24-hour limitation after the requirement of "contemporaneously," but the recent experience that a time certain be affixed so that no one can later claim that "contemporaneously" means days, weeks, months, or even years later.

The requirement that the President shall contemporaneously inform the Intelligence Committees is intended to provide a procedure where the Intelligence Committees might be consulted in advance so that the President would have the benefit of their thinking if he so chose. The language of section 501(a)(1) to keep the Intelligence Committees "fully and currently informed of all intelligence activities" suggests a design for congressional input. Even with such contemporaneous information and the possibility of congressional input, it would remain within the President's power to proceed or not as he chooses.

There is much to recommend the availability of the institutional experience of the Senate and House Intelligence Committees. Had there been a review by the Intelligence Committees of the sale of arms to Iran, it is likely that the policy would never have been implemented. Had members of the Senate and House Intelligence Committees joined the Secretary of State and the Secretary of Defense and others in discouraging Presidential action in selling arms to Iran, the President might well have ceased and desisted on his own. Had the President declined to terminate that disastrous policy, then the Congress might have utilized its power to terminate funding through its appropriations powers, thereby ending the sale of arms to Iran.

The President's obligations on congressional oversight are further limited by excluding notice to the Intelligence Committees where the President determines that it is essential to limit such disclosure to meet extraordinary circumstances affecting the vital interests of the United States. In that event, such notice is to be given only to the chairman and ranking minority members of the Intelligence Committees, the Speaker and minority leader of the House of Representatives and the majority and minority leaders of the Senate. That more limited disclosure gives sufficient assurances of preservation of secrecy. A valid argument could be made that notice should go only to the leadership of both Houses in the interests of secrecy, but the greater familiarity of the chairman and vice-chairman of the Intelligence Committees warrants their being included.

SECTION 3

This bill further provides for a mandatory sentence of imprisonment for any officer or employee of the United States who provides false information to any committee or subcommittee of the Senate or House of Representatives. No matter how rigorous or exacting statutory requirements may be, the oversight function of Congress cannot be accomplished if executive branch officials present false or misleading testimony to the Congress.

This is especially problemsome where witnesses appear before the Intelligence Committees in a secret session. Where evidence is provided in a public session, there is an opportunity for others to learn of the false information and to come forward with the truth so that the congressional oversight committees can perform their functions. That is not possible where key executive officials appear in secret and provide false information to the Oversight Committees. Under those circumstances, the committees realistically have little or no opportunity to determine the truth.

While false official statements to such congressional committees are covered by section 1001 of the Criminal Code, (18 U.S.C. 1001), this kind of misconduct, either in secret or public session, is so serious that it warrants a mandatory jail sentence.

While there has been experience with witnesses who return to the committee to apologize for prior testimony, such apologies fall far short of correcting the enormous damage which has been done. Obviously, there is no way to know how much false, deceptive, or misleading evidence has been presented in secret where the truthful information has never come to the attention of the committees. This mandatory jail sentence is intended to put members of the executive branch on notice that the matter is extremely serious as reflected by the heavy penalty.

It is obviously well within the ambit for any witness who appears before a congressional committee to decline to answer any question until that witness has had an opportunity to reflect on the question or to consult with his or her superior. Simply stated, it is understandable if a witness declines to answer or asks for a delay, but it is intolerable for false or deceptive answers to be made. The committee would doubtless consider not insisting on an answer where some reason was advanced for nondisclosure. Where any witness chooses to decline to answer a question, there is always an opportunity for further consideration by both the witness and the committee.

In any event, an enforceable legal obligation to answer does not arise as a practical matter until citation for contempt of Congress is obtained and the court orders an answer. It is only at this point that a witness is subject to a sanction for contempt for failing to answer.

This bill further provides that anyone who gives such false or deceptive information may recant and avoid possible criminal liability by correcting the record within 5 days. This 5-day period should be ample time for rethinking the issue and time to make the appropriate correction.

SECTION 4

The Inspector General Act of 1978, Public Law 95-452, established independent Presidentially-appointed and Senate confirmed IG's in 19 Federal departments and agencies. The creation of these statutory IG's has improved the effectiveness of the Federal Government. The act also ensures that both the Congress and agency heads are receiving independent assessments of programs and operations for which they are accountable or have oversight responsibility. However, the CIA was not included.

Currently, the Inspector General for CIA is usually appointed internally. That process is not conductive to objectivity.

A prime example was the CIA's mining of the harbors of Nicaragua. The CIA official with operational responsibility for that action was next appointed to the position of Inspector General. While he disqualified himself from the ensuring IG investigation of that activity, it is difficult to calculate the objectivity of that investigation by virtue of his presence.

The Intelligence Committee has had access to some IG reports in past years, but for the most part, it has not exercised oversight over the intelligence community's IG's. That has been a responsibility of the Intelligence Oversight Board. The Iran-Contra investigations have raised serious questions about the effectiveness of that body. The Tower Commission found that (III-22): "Lieutenant Colonel North and Vice Admiral Poindexter received legal advice from the President's Intelligence Oversight Board that the restriction on lethal assistance to the Contras did not cover the NSC staff." In addition, review of Executive Order 12334, which establishes the Intelligence Oversight Board, and the operations of the Board itself reveal that the Board is not adequately staffed, that the quality of its legal counsel has been demonstrated to be less than thorough and experienced, and, finally, that its effectiveness is not held in high regard by the Intelligence Committees.

This bill would greatly increase the independence and credibility of the CIA's Inspector General by making the IG a permanent, statutory official subject to appointment by the President and confirmation by the Senate with limitations on grounds for dismissal. To increase accountability to Congress, semiannual and special reports by the Inspector General must be promptly submitted to the Intelligence Committees, as well as to the Director of the CIA.

Secrecy is provided for, as is subpoena power. While the Director may halt an audit or investigation, he may do so only if:

First, it concerns an ongoing operation;

Second, he finds it vital to national security; and

Third, he reports to the Intelligence Committees within 7 days on the reasons.

The combined effect of an independent IG, mandatory penalties for deceiving Congress, and statutory requirements on notice to Congress on covert action along with written findings are therapeutic steps which should be taken in light of our experience from the Iran/Contra matter.

After the problems were publicly disclosed on the failure of the executive branch to notify the Intelligence Committees on the sale of arms to Iran, there was an exchange of correspondence between the President and the Senate Intelligence Committee. The President wrote to Chairman BOREN by letter dated August 7, 1987, expressing his support for certain key concepts recommended by the Senate Intelligence Committee. Paragraph 6 of the President's letter stated:

> In all but the most exceptional circumstances, timely notification to Congress under Section 501(b) of the National Security Act of 1947, as amended, will not be delayed beyond two working days of the initiation of a special activity.

In my judgment, where notice may not be given even in "the most exceptional circumstances" the fundamental requirement of notice is defeated because it remains with the purview of the President to determine what constitutes the "exceptional circumstances." Precise requirements are necessary as set forth in this proposed legislation.

By Mr. LAUTENBERG:

S. 1819. A bill to amend the National Driver Registration Act of 1982 to assist in the identification of operators of aircraft who have driving problems by permitting access to the National Driver Register; to the Committee on Commerce, Science and Transportation.

IDENTIFICATION OF AIRCRAFT OPERATORS WHO HAVE DRIVING PROBLEMS

● Mr. LAUTENBERG. Mr. President, I rise today to introduce a bill aimed at closing a serious loophole in our aviation safety network.

This bill would authorize individuals to provide the Federal Aviation Administration with access to the National Driver Register [NDR] in reviewing pilot applications for medical certification. It would allow the FAA to use this information to verify information provided by pilots, and to help evaluate whether the airman meets minimum medical standards prescribed by the FAA.

The FAA would not be provided access to information more than 3 years old, unless that information pertains to a revocation or suspension of a drivers license that is still in effect. The FAA would not be permitted to use the information for purposes not set out in statute.

In addition, the airman would be provided the opportunity to review the NDR information and comment on it in writing. This would protect against false identification of an applicant, and give the applicant the opportunity to provide any explanation for information in the NDR.

With enactment of this provision, it is intended that the FAA will promulgate regulations to require authorization of access to the NDR as a condition of the medical certification process.

In order to legally fly, any pilot must receive regular medical certification. The majority of the exams are performed by private physicians approved by the FAA.

There are several classes of certification. First-class certification is for airline pilots, and must be renewed every 6 months. Second-class certification is for commercial pilots, flight engineers, and flight navigators. It is renewed annually. Private pilots receive third-class certification, which must be renewed every 24 months.

Currently, the FAA requires pilots seeking certification to report drug or alcohol problems, including drunk driving convictions. This is a requirement too many do not comply with. And the FAA does not know who those people are. Therein lies the problem.

Although the majority of pilots take the responsibility that comes with their license seriously, there are those that don't. There are those who might drink and fly. There are those who would not comply with FAA's reporting requirements.

A report by DOT's inspector general in February of this year revealed that this reporting system is faulty. There are 711,648 active airmen now certified by the FAA. The inspector general found that about 10,300 of these pilots had their driving license suspended or revoked for DWI convictions in the last 7 years.

However, 7,850 of the 10,300—of 76 percent—did not report this information to the FAA.

These are the people—those who intentionally do not comply with Federal requirements—whom this bill would specifically address.

Mr. President, let me cite a few examples of where the voluntary reporting system proved lacking.

In February 1986, a commercial cargo pilot was killed when his plane crashed in Tennessee, 3 hours after leaving Milwaukee. His blood alcohol content [BAC] was found to be 0.158, four times higher than the level FAA considers the threshold of impairment.

A review of his driving record indicated a history of drunk driving: 18 months earlier, he demolished his van while driving 100 miles per hour. At that time, his BAC was 0.26. From 1981 to 1984, he had seven DWI convictions, and had his drivers license revoked.

Yet, he could still fly. And the FAA had no way of knowing about his record.

The inspector general's investigation turned up 262 first-class pilots with at least 1 drunk driving conviction. They included a pilot who had two separate DWI convictions, resulting in a 5-year revocation of his drivers license.. The IG also found 29 second- and third-class pilots who had 3 or more DWI convictions since 1983. Combined, the 29 pilots had 94 DWI convictions in that time. This included 1 third-class pilot who had 3 convictions and had his license suspended for 10 years.

Yet, they all could fly, and the FAA had no way of checking into their records.

Mr. President, this is a gap we need to close. A driving record can indicate a pattern of behavior. If someone has a history of drunk driving convictions, we have a right to think about whether we want to allow that person in the cockpit of a plane.

The FAA already has the interest in knowing. Its medical certification application form asks for a great deal of information about a pilot's background. Included on that form is an inquiry about whether the applicant ever had, or now has traffic or other convictions.

But, under current law, the FAA cannot verify the information the applicant provides. The FAA should not fly blind while some pilots fly drunk. This bill would remove the obstacle that prevents the FAA from confirming pilots' backgrounds.

This change has long been endorsed by the National Transportation Safety Board, and is supported by the Department of Transportation. I would note, Mr. President, that similar provisions were included in the Rail Safety Improvement Act, which I introduced in April, and in S. 1539, the rail safety legislation subsequently reported by the Senate Commerce Committee.

I intend to offer this bill as an amendment to the Airport and Airway Capacity Expansion Act when it is considered on the Senate floor. I urge my colleagues to support this important legislation.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1819

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 206 of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended as follows:

(1) In subsection (a), paragraph (1) is amended by substituting the word "transportation" for "highway".

(2) In subsection (b), insert the following new paragraph immediately after paragraph (2), and renumber paragraphs (3) and (4) as paragraphs (4) and (5), respectively:

"(3) Any individual who has applied for or received an airman's certificate may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to the Administrator of the Federal Aviation Administration. The Administrator of the Federal Aviation Administration may receive such information, and shall make that information available to the individual for review and written comment. The Administrator shall not divulge or use such information except to verify information required to be reported to the Administrator by airmen applying for an airman medical certificate and to evaluate whether the airman meets the minimum medical standards as prescribed by the Administrator to be issued an airman medical certificate. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".

(b) Section 206(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended by adding the following sentence at the end of paragraphs (b)(1), (b)(2), and (b)(4), respectively: "Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), and under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".●

By Mr. SPECTER:

S. 1820. A bill to improve the objectivity, reliability, coordination and timeliness of national foreign intelligence through a reorganization of positions, and for other purposes; to the Select Committee on Intelligence.

NATIONAL INTELLIGENCE REORGANIZATION ACT

Mr. SPECTER. Mr. President, the bill I am introducing today would enhance considerably the objectivity and reliability of our Nation's intelligence, which the events of the past 2 years have demonstrated to be woefully lacking. It would greatly improve the management structure and control of the activities and vast resources of our country's intelligence agenices and departments.

In his Iran-Contra testimony, Secretary of State George Shultz summarized, in very clear terms, the principal problem with U.S. intelligence. [One is] the importance of separating the function of gathering and analyzing intelligence from the function of developing and carrying out policy. If the two things are mixed together, it is too tempting to have your analysis and selection of information that's presented favor the policy that you're advocating. Secretary Shultz went on to say that, long before the Iran-Contra events came to light, he already had come to have grave doubts about the objectivity and reliability of some of the intelligence he was receiving precisely because the people who supplied it were too deeply involved in advocating and carrying out policy.

In the 40 years since passage of the National Security Act the Directors of Central Intellience have been tested repeatedly on their ability to maintain a delicate separation of two competing responsibilities. On the one hand, the Director of Central Intelligence [DCI] has been expected to provide unvarnished intelligence information to the President and other foreign policymakers. On the other hand, he has been asked to be a participant in the making and execution of foreign policy through covert actions. If history has taught us anything, it is that the desired separation cannot and has not been maintained. It is unrealistic and probably unfair to expect our Nation's senior intelligence officer to be the purveyor of objective, unbiased information upon which the President and Secretary of State may formulate a foreign policy, while at the same time charging him to influence and implement that policy in the form of covert action.

The problem is particularly acute when the DCI is a foreign policy activist. Director William Casey was not the first Director of Central of Intelligence who desired to be involved to some degree in the formulation or implementation of foreign policy, nor is he likely to be the last. Recognizing this, we should take steps to ensure, to the greatest degree possible, some structural separation of the DCI's current function. We simply cannot afford to have two Secretaries of State, two foreign policyn akers who may be attempting to mov the country in different directions, one overtly and the other covertly. No one is well served by this contradiction—not the President, not the Congress and not the country.

Now we have a choice, we can preserve the status quo and hope that the current Director of Central Intelligence—and each of his succe sors—will understand the lessons of the Iran-Contra affair. Or we can create a better system of checks and balances on covert action undertaking. It is up to the Congress to clarify in the law what we expect the Director of Central Intelligence and the CIA to do and not to do. We can do this by providing an organizational framework designed to permit the Director of Central Intelligence to provide objective, reliable and coordinated intelligence to policymakers in a timely manner. However, we must make it clear to the Director—not simply the current one but to all future ones—that it is not the DCI's function to formulate and implement foreign policy.

This bill accomplishes these purposes by:

First, amending the National Security Act of 1947 to make clear that the principal role of foreign intelligence and of the agencies who provide such intelligence is to ensure the provision of objective, reliable, coordinated and timely information upon which the President and other senior foreign policymakers may base sound foreign policy decisions;

Second, relieving the Director of Central Intelligence of the responsibility for implementing covert actions, but charging him with responsibility for overseeing the conformity of such actions with applicable laws and regulations;

Third, establishing the position of "Director of the Central Intelligence Agency" to manage the CIA on a full time basis and to implement cover actions directed by the President.

As I already have stated, this bill will greatly enhance the management of the activities and vast resources of our several intelligence departments and agencies. In 1947, President Truman, mindful of the President's need for intelligence and of Pearl Harbor's bitter lesson stemming from uncoordinated and poorly disseminated intelligence, formed an agency to centralize intelligence. The position of Director of Central Intelligence was created to head the new Central Intelligence Agency and to coordinate the activities of the intelligence entities in existence. Those entities consisted of the intelligence services of the Army and Navy, a small bureau in the State Department and remnants of the OSS. Since 1947, that coordination task has grown enormously with the addition of complex technology, the commitment of vast resources and the establishment of many large, secretive and organizationally complex departments and agencies.

Since John F. Kennedy, several Presidents have directed their Director of Central Intelligence to devote the bulk of their time to the intelligence community. For a number of reasons this has not happened. Suffice it to say that, in some cases, DCI's have found the operational role of the CIA more glamorous than managing an intelligence community composed of agencies and departments opposed to centralized direction. Events such as Watergate, congressional investigations of wrongdoings, and the turnover of DCI's, also have contributed to the neglect.

Today, the intelligence community, as it is called, consists of the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the large foreign intelligence and counterintelligence elements of the Army, Navy, Air Force and Marine Corps, offices for the collection of specialized intelligence through reconnaissance, the FBI's Foreign Counterintelligence Division, the State Department's Bureau of Intelligence and Research and elements of the Treasury and Energy Departments. These organizations provide what we call national foreign intelli-

gence. There are other elements in the Government, mostly within the Defense Department, which run a vast system of tactical intelligence nearly as complex and as expensive as that of the national foreign intelligence world. Outside of the Government, there is another world of contractors who design and develop these complex intelligence systems and, in some cases, operate them for the intelligence agencies.

Make no mistake about my remarks. These agencies and programs are critical to our national security. The country needs them. But their budgets are in the billions; their growth in terms of people is the greatest in the history of U.S. intelligence; their mission and challenges now and for the foreseeable future are so demanding, complex and interdependent that their management and leadership can no longer be accomplished by a Director of Central Intelligence who also must manage a large agency such as the CIA.

The Intelligence Oversight Committees which review the programs and budgets of the intelligence community have clearly identified management of the intelligence community as a critical issue. In 1976, the Select Committee to study Government operations with respect to intelligence—the predecessor to the Senate Select Committee on Intelligence—"found concern that the function of DCI in his roles as intelligence community leader and principal intelligence adviser to the President is inconsistent with his responsibilities to manage one of the intelligence community agencies—the CIA." The committee also expressed concern that the DCI's new span of control—both the entire intelligence community and the entire CIA—may be too great for him to exercise effective detailed supervision of clandestine activities. Those concerns are even greater today than they were 11 years ago, because of the greater challenges and costs facing intelligence, the growing competition for resources and the unacceptable risks to U.S. foreign policy.

To address this problem, the bill I am introducing today also:

Changes the title of the "Director of Central Intelligence" to the "Director of National Intelligence" to reflect the new, more important status of this position (the title is not new; it was first proposed by the Senate Intelligence Committee in 1980);

Establishes the Director of National Intelligence as the primary adviser to the President on national foreign intelligence and as the full-time manager of the intelligence community with clearly defined statutory responsibilities and authorities for the foreign intelligence effort;

Makes the Director of National Intelligence a statutory member of the National Security Council to ensure that he is aware of emerging issues for which there is an intelligence need and to ensure that there is an objective intelligence base for national security and foreign policy decisions being contemplated;

Ensures that the position of the Director of National Intelligence as leader of the intelligence community is not a hollow one, by giving the position not only the statutory authority to approve and submit the intelligence community program, resources and budget, but also to task all intelligence collection and analytical resources;

Eliminates the need for a Director of the Intelligence Community staff since that 237 person staff plus other offices and personnel would report directly to the Director of National Intelligence.

Finally, I endorse completely Judge Webster's view, recently expressed to a group of reporters, that the CIA's directorship should not change every time a new President is elected. This gives rise to charges that the position has been politicized and that there is an inadequate institutional memory of lessons learned from the past. In the past 15 years there have been 7 heads of the CIA and only 2 of these were career intelligence officers. We cannot afford a generalized loss of confidence in the CIA's objectivity and reliability, because of the politicization of its analysis such as was expressed by Secretary of State Shultz, to ensure a more professional approach to intelligence activities and analysis, to reduce the risk of politicization and to protect against the dangers of an intelligence "czar," this bill also would:

Create a fixed, 7-year tenure for the Director of the Central Intelligence Agency.

Require that at least one of the positions of Director or Deputy Director of the Central Intelligence Agency be filled by a career intelligence officer from the intelligence community.

I am not proposing that the Director of National Intelligence be tenured because I believe that the President should have the right to select individuals who are to serve as his primary advisers. I believe that with a separate and tenured Director of the CIA and with other intelligence agency heads not under the administrative control of the Director of National Intelligence (the Directors of the National Security Agency and the defense intelligence agencies are appointed by the Secretary of Defense), we would have a better system of checks and balances against politicization of intelligence.

Thank you, Mr. President.

By Mr. BREAUX:

S. 1821. A bill to amend the Internal Revenue Code of 1986 and the Social Security Act to provide that certain services performed by an individual in the processing of fish or shellfish are exempt from the definition of employee for Federal tax purposes; to the Committee on Finance.

SEAFOOD PROCESSOR TAX LEGISLATION

Mr. BREAUX. Mr. President, I would like to bring to the attention of my colleagues and ask for their assistance with an issue that has profound implications for the U.S. seafood processing industry, particularly in the Gulf of Mexico region.

Recently, the Internal Revenue Service [IRS] has announced a change in policy with regard to the Federal tax responsibilities of U.S. seafood processors. Specifically, the IRS has stated a new position that contract workers in seafood processing facilities who peel, pick, head, shuck, fillet, or otherwise process fish or shellfish, and who are compensated on the basis of the volume of seafood thus processed, are no longer to be treated as independent contractors, but as employees instead. A good example are the thousands of workers at the small "mom and pop" crab, oyster and shrimp houses that dot our gulf coast, but many analogous examples exist nationwide.

This new IRS position, which directly contradicts long-standing IRS rulings and policy, places a substantial and unjustified financial and administrative burden on the already marginal U.S. seafood processing industry. This new burden translates to a net increase in Federal tax responsibility of 7.95 percent for the seafood processors as well as a costly administrative burden of keeping detailed records on and withholding taxes from payments to a vast array of transient workers. In fact, unable to bear this new responsibility, small family-owned seafood processing businesses throughout the gulf coast have already begun to close their doors. This certainly does nothing to improve the serious unemployment situation that resulted from the oil and gas depression in this region.

The treatment of workers as independent contractors for Federal tax purposes under certain types of employment arrangements has significant statutory precedent. For example, Congress has established independent contractor status in analogous situations where workers are compensated on the goods produced (code section 3121(b)(16)—tenant farmers; code section 3121(b)(20)—fishermen), where the individuals participating in an industry are by custom or habit highly mobile (code section 3121(b)(1)—foreign migrant agricultural workers), and where the administrative burdens of treating individuals as employees would be unreasonable (code section 3121(b)(20)—fishing vessel employees: see Senate Report No. 938, 94th Cong., 2d Sess. 385-86 (1976)).

Mr. President, workers that perform the nominal processing of seafood possess these same characteristics and have thus been treated appropriately by IRS until recently. Rather than receive a fixed wage, these workers are paid on the basis of the quantity of seafood they actually process. As a matter of culture, these individuals are generally highly mobile, frequent-