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AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1997 FOR THE INTELLIGENCE ACTIVITIES OF THE UNITED STATES GOVERNMENT AND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM AND FOR OTHER PURPOSES

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APRIL 30, 1996.—Ordered to be printed

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Mr. SPECTER, from the Committee on Intelligence,  
submitted the following

### REPORT

[To accompany S. 1718]

The Select Committee on Intelligence, having considered the original bill (S. 1718), which authorizes appropriations for fiscal year 1997 for the intelligence activities and programs of the United States Government and the Central Intelligence Agency Retirement and Disability System, and which accomplishes other purposes, reports favorably thereon and recommends that the bill do pass.

#### PURPOSE OF THE BILL

This bill would:

- (1) Authorize appropriations for fiscal year 1997 for (a) the intelligence activities and programs of the United States Government; (b) the Central Intelligence Agency Retirement and Disability System; and (c) the Community Management Account of the Director of Central Intelligence;
- (2) Authorize the personnel ceilings as of September 30, 1997, for the intelligence activities of the United States and for the Community Management Account of the Director of Central Intelligence;
- (3) Authorize the Director of Central Intelligence, with Office of Management and Budget approval, to exceed the personnel ceilings by up to two percent;
- (4) Extend for two additional years the President's authority to delay the imposition of sanctions when necessary to protect

an intelligence source or method or an ongoing criminal investigation;

(5) Direct the DCI to develop regulations prohibiting an Intelligence Community employee from working for a foreign government for five years after retirement;

(6) Clarify FBI's authority to access local and long distance telephone billing records and expand the application of the civil remedy provisions that apply to violations of the access provision;

(7) Criminalize theft of economic proprietary information on behalf of, or with the intent to benefit, a foreign government or its agent;

(8) Provide for renewal and reform of the Intelligence Community; and

(9) Establish a Commission to review the organization of the U.S. Government to combat proliferation and recommend improvements.

#### THE CLASSIFIED SUPPLEMENT TO THE COMMITTEE REPORT

The classified nature of United States intelligence activities prevents the Committee from disclosing the details of its budgetary recommendations in this Report.

The Committee has prepared a classified supplement to this Report, which contains (a) the classified annex to this Report and (b) the classified schedule of authorizations which is incorporated by reference in the Act and has the same legal status as a public law. The classified annex to this report explains the full scope and intent of the Committee's actions as set forth in the classified schedule of authorizations. The classified annex has the same status as any Senate Report, and the Committee fully expects the Intelligence Community to comply with the limitations, guidelines, directions, and recommendations contained therein.

This classified supplement to the Committee Report is available for review by any Member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress.

The classified supplement is also made available to affected departments and agencies within the Intelligence Community.

#### SCOPE OF COMMITTEE PROGRAM AND BUDGET REVIEW

The Committee conducted a detailed review of the Administration's three major intelligence budget requests for fiscal year 1997: the National Foreign Intelligence Program (NFIP) of the Director of Central Intelligence; the Joint Military Intelligence Program (JMIP) of the Deputy Secretary of Defense; and the Tactical Intelligence and Related Activities (TIARA) of the Military Services. The Committee's review included a series of briefings and hearings with senior intelligence officials, numerous staff briefings, review of budget justification materials and numerous written responses provided by the Intelligence Community to specific questions posed by the Committee.

In addition to its annual review of the Administration's budget request, the Committee performs continuing oversight of various intelligence activities and programs, to include the conduct of audits and reviews by the Committee's audit staff. These inquiries

frequently lead to actions initiated by the Committee with respect to the budget of the activity or program concerned.

As a result of a new Memorandum of Agreement between the leadership of the Senate Intelligence and Armed Services Committees, the Committee is including its recommendations on both JMIP and TIARA in its public report and classified annex. The SSCI has agreed that JMIP and TIARA issues will continue to be authorized in the defense authorization bill. SASC has agreed to involve SSCI staff in staff-level defense authorization conference meetings and to provide the Chairman and Vice Chairman of the SSCI the opportunity to consult with the SASC Chairman and Ranking Member before a JMIP or TIARA issue is finally closed out in conference in a manner with which they disagree. The Committee looks forward to continuing its productive relationship with the SASC on all issues of mutual concern.

#### COMMITTEE PROGRAM AND BUDGET RECOMMENDATIONS

Most of the Committee's specific recommendations related to the Administration's budget request for intelligence and intelligence-related activities are classified. This includes the amount of the total fiscal year 1997 budget request, as well as any comprehensive treatment of program elements. However the Committee is committed, consistent with security considerations, to making its view regarding its concerns and priorities for intelligence public to the extent possible. Further recommendations, as well as classified details on these unclassified recommendations, are provided in the classified annex accompanying this bill.

#### NATIONAL FOREIGN INTELLIGENCE PROGRAM

##### *Personnel and funding resources for national intelligence*

Since the beginning of the 1990s, the Committee has been at the forefront of actions to reduce and reorient intelligence funds and personnel to reflect new post-Cold War missions and priorities.

In fiscal year 1991, the Committee initiated the policy which became a congressional mandate to reduce the number of national intelligence personnel by 17.5 percent by fiscal year 1999. The Secretary of Defense and the Director of Central Intelligence later agreed to extend downsizing by 2 percent per year for three years for a new objective of 22.5 percent by 2002. All of the intelligence agencies are making progress in meeting this objective. The Intelligence Community is increasingly turning its attention to "right-sizing" its workforce, to ensure that it can attract, train, and retain personnel with the appropriate skills mix for the future.

The Committee has also played a leading role in reducing and redirecting funding for national intelligence. Since 1990, the Committee has cut each successive Administration request, so that Intelligence Community spending has declined by 19 percent in real terms compared to the beginning of the decade. This year, the Committee is recommending a modest increase—just over 1 percent—to the Administration's budget request for national intelligence.

*Areas of continuing committee emphasis*

Last year, the Committee focused on enhancing intelligence capabilities in the high-priority areas of proliferation, terrorism, counter narcotics, and counterintelligence. The Intelligence Community sustained in fiscal year 1997 most of the fiscal year 1996 Congressional initiatives in these areas. The Committee applauds the Director of Central Intelligence (DCI) and the Intelligence Community for recognizing the need to reorder priorities within the NFIP in this way. The Committee also makes additional recommendations for increased resources in fiscal year 1997 for these programs and activities.

Another major theme of the Committee's review of the fiscal year 1996 budget request was an apparent imbalance between funding of new collection capabilities and funding required to fully process, disseminate, and exploit collected information. The Committee is gratified to note that this theme was major focus of the Intelligence Community fiscal year 1997 program build and that the DCI sustained in fiscal year 1997 many of the fiscal year 1996 Congressional initiatives to enhance processing, dissemination, and exploitation capabilities. Further work is required in this area, but the DCI has made a significant commitment in this area that is acknowledged by the Committee.

*Continuing review of NRO financial management*

Section 310 of S. 922 of the Intelligence Authorization Act for Fiscal Year 1996 contained provisions addressing the financial management of the National Reconnaissance Office (NRO). It restricted the amount of forward funding permitted to the NRO at the beginning of fiscal year 1997 and directed a joint review of the NRO's financial management practices by the Inspectors General of the Central Intelligence Agency and the Department of Defense. It also directed the President to report to Congress with a proposal to subject the budget of the Intelligence Community to greater oversight by the Executive branch.

The Committee continues to review in detail the NRO's financial condition and its management practices, including convening two separate on-the-record briefings on this topic. Further, the Committee approved the reprogramming of \$820 million additional excess forward funding from the NRO to support Bosnia deployment. The Committee has also reviewed the President's report and approves the measures detailed therein to enhance Executive Branch oversight of the NRO. Finally, the Committee awaits the final report of the Inspectors General related to the NRO's organization, forward funding, and financial management practices. While much has been achieved, additional steps are required to restore the confidence of the Committee in NRO financial management practices.

*Arms control monitoring*

The Committee has become increasingly disturbed over the apparent disarray in the Intelligence Community over funding for arms control monitoring capabilities. Some critical arms control monitoring capabilities are funded for one year only, raising the question of whether these systems will be available to support monitoring requirements for existing arms control treaties. Short-

falls exist in other critical areas as well, including exploitation and analysis of arms control intelligence. In light of this situation, the Committee requests that the DCI—in coordination with the Director of the Arms Control and Disarmament Agency—provide a comprehensive plan for upgrading U.S. arms control collection, processing, and analysis capabilities by fiscal year 1999 in order to fully meet the requirement to provide effective monitoring of treaties signed by the United States or near completion. This plan should be submitted to the intelligence oversight committees no later than March 1, 1997.

*Quality of life issues*

The Intelligence Community is putting renewed emphasis on a wide variety of quality of life issues for intelligence personnel. The DCI has recently focused attention on the need for comprehensive personnel reform for both the CIA and the defense components of U.S. intelligence. Although the Administration had not finalized its reform proposals by the time the Committee marked up the fiscal year 1997 Intelligence Authorization Act, the Committee is committed to pursuing legislation and funding for such reforms, as required.

Further, the Committee addressed current shortfalls in another quality of life area—intelligence facilities. The Committee annually reviews the facilities plans and requirements of individual intelligence agencies and components—including requirements for new facilities or modifications to existing facilities—funded in the DCI's annual budget submission. Indeed, Section 602 of the Intelligence Authorization Act for Fiscal Year 1995 established very stringent requirements for congressional notification and approval of Intelligence Community construction and improvement projects. This year, the Committee is recommending several changes to the Fiscal Year 1997 NFIP budget request, based on information received in congressional budget justification books, hearings, and answers to Committee questions-for-the-record. Specifically, the Committee has recommended that new facilities be constructed to house the Army's National Ground Intelligence Center (NGIC) and the Defense Intelligence Agency's Missile and Space Intelligence Center (MSIC). In both cases, intelligence personnel are subjected to inadequate working conditions, with considerable potential structural, health, fire, and safety hazards. The Committee believes that new facilities are required and has included recommendations to this effect in its markup.

JOINT MILITARY INTELLIGENCE PROGRAM

*Tactical unmanned aerial vehicle ACTD*

A request for proposal has been released, for a single Tactical Unmanned Aerial Vehicle (TUAV) to replace the former Hunter and Maneuver program, and contract award is expected within one month. The restructuring of the program and the creation of an Advanced Concept Technology Demonstration (ACTD) has resulted in an excess of unexpended funds in fiscal year 1995 and fiscal year 1996. The Committee is also concerned that the DARO will not be able to exclude the final year 1997 budget request for the TUAV

of \$64.0 million as planned. Therefore, the Committee recommends that the fiscal year 1997 budget request for TUAV be reduced by \$12.8 million and encourages the Department to reprogram any remaining prior year funds within the Defense Airborne Reconnaissance Program (DARP).

The Committee wants to reiterate its strong support for the TUAV program. At the same time, the Committee is concerned about the high degree of concurrency in the TUAV program. The Committee understands the difficulties in transitioning an ACTD into procurement but still believes that the "fly before you buy" strategy of an ACTD is the correct one.

*Global Hawk sensor upgrades*

The DARP fiscal year 1997 budget request for the Global Hawk unmanned aerial vehicle program is \$81.2 million. Within this budget amount, the Administration proposes to initiate a new payload capacity for Global Hawk. The Global Hawk has not yet achieved first flight and has not yet successfully demonstrated its primary sensor capability. Moreover, the Committee is not aware of any decision to move Global Hawk from an ACTD into production. Therefore, the Committee believes that it is premature to initiate any additional payload development and recommends a reduction to the Administration's fiscal year 1997 budget request of \$9.8 million for the Global Hawk sensor upgrade.

*RC-135 Rivet Joint aircraft No. 16*

The RC-135 RIVET JOINT airborne reconnaissance fleet provides worldwide tactical intelligence support to theater users. Its primary mission is to detect, collect, analyze, and disseminate tactically significant information in support of theater warfighting needs. The intelligence information gathered by this platform supports a broad spectrum of theater and national intelligence requirements.

Since the Gulf War, the operational tempo for the Rivet Joint fleet has been extremely high. This high operational tempo has caused the regional CINC's to make expansion of the Rivet Joint fleet by two aircraft a top priority. The Committee is aware that the Deputy Secretary of Defense and the Director of Central Intelligence have jointly signed an Enhanced Defense Review Board (EDRB) decision memorandum instructing that two additional Rivet Joint aircraft be built. Rivet Joint No. 15 is included in the fiscal year 1997 budget request and Rivet Joint No. 16 is programmed for FY 1998. Because of the high priority assigned to additional Rivet Joint aircraft by the CINC's and the efficiencies that can be realized by acceleration of the program, the Committee recommends an additional \$52.3 million to build Rivet Joint No. 16 in fiscal year 1997. By accelerating this procurement into fiscal year 1997, the Committee believes that the Air Force will realize 15 percent cost savings over fiscal year 1998 procurement due to efficiencies from material quantity purchases and mechanical fabrication.

*Rivet Joint technology transfer*

The Committee understands that there is an Air Force requirement for long-range detection and tracking of missile launches and rapid transmission of precise launch site information in order to destroy the launch vehicles as well as provide impact point data to friendly forces. The Committee is interested in the possibility of transferring operationally proven Cobra Ball sensor technology to the RC-135 Rivet Joint fleet to satisfy this requirement. Therefore, the Committee requests that the Air Force prepare a report and provide it to the congressional defense and intelligence committees by August 1, 1996, on the proposed technology transfer. The report should include an assessment of Service requirements for the Cobra Ball sensor on the Rivet Joint, Rivet Joint program impacts (cost, schedule, technical risk), and any infrastructure (processing, dissemination, exploitation) implications of such a modification to the Rivet Joint program.

*U-2 upgrades*

The Committee is concerned with the apparent decision by the Defense Airborne Reconnaissance Office not to continue upgrading current airborne reconnaissance platforms. The Committee understands that the Department of Defense will shortly be proposing a reprogramming that will add funds for U-2 sensor upgrades; a move the Committee supports. The Committee also provides an additional authorization of \$25.0 million in fiscal year 1997 for two separate sensor upgrade programs for the U-2 fleet, details of which are contained in the classified annex accompanying this report.

*Common data link*

The Common Data Link (CDL) program is an effort within the DARP to define and implement an interoperable command, control and communications capability for intelligence and reconnaissance assets, to include manned and unmanned systems. The Congress authorized and appropriated \$48.0 million for CDL in fiscal year 1996. The fiscal year 1997 budget request for CDL is \$29.5 million. Poor program execution in fiscal year 1996 allows the Committee to recommend a reduction to the fiscal year 1997 budget request of \$6.5 million.

*National training simulator*

The request for the Defense Space Reconnaissance Program (DSRP) includes \$10.0 million to begin development of a new national training simulator. Because the outyear funding for this initiative has not been programmed, and the Committee has not received any information to justify this effort, including total program cost and schedule, the Committee recommends that the request to initiate development of a new national simulator be denied at this time, and further recommends deletion of \$10.0 million from the DSRP fiscal year 1997 budget request.

## TACTICAL INTELLIGENCE AND RELATED ACTIVITIES

*Theater Rapid Response Intelligence package*

The Theater Rapid Response Intelligence Package (TRRIP) is a manportable system for use by the Army to collect and disseminate actionable information from deployed locations. TRRIP have been funded under the Foreign Counterintelligence Program (FCIP) for theater and echelon above corps units. No funds have been requested to provide TRRIP to tactical forces. The Committee recommends an addition of \$6.5 million to purchase approximately 300 sets for tactical units, equipping Corps and Division level counterintelligence and human intelligence teams.

*Navy JSTARS*

The Committee believes that there are sound reasons for the Navy to acquire the ability to receive, process, display, and disseminate data on moving targets from the Joint Stars system. The Navy is requesting the Congress to authorize and appropriate funds for a new class of "arsenal" ship, which would be equipped with hundreds of surface-to-surface missiles, such as Tomahawk and the Army TACMS, to attack targets ashore. For this ship to contribute to halting an invading force, it must be able to attack mobile targets and not just fixed installations. As both the Tomahawk and TACMS program offices attest, the sensor of primary importance to attacking distant moving targets is the moving target indicator (MTI) radar on Joint Stars.

Therefore, the Committee recommends that \$10.0 million be provided in fiscal year 1997 in research and development to integrate Joint Stars into key Navy systems. Of this amount, approximately \$5.0 million is required to integrate the standard Link 16 data link used on Joint Stars into the Navy's Tactical Command System. Another \$5.0 million would be used to incorporate appropriate Joint Stars MTI data processing and display software, including Joint Stars Link 16 message sets, into standard Navy computer systems and fighter aircraft.

*P-3 intelligence support*

The budget request includes \$17.6 million to augment forward deployed aircraft with non-developmental, commercial-off-the-shelf, roll-on/roll-off SIGINT sensors. The Committee is concerned that the Navy has not developed an operational concept for this added capability and that these aircraft will not be interoperable with other SIGINT platforms. The Committee therefore recommends denial of the authorization request.

*RC-135 re-engining*

Last year the Committee recommended an initiative to begin re-engining of the RC-135 specialty aircraft. While the Defense Department is currently executing the fiscal year 1996 program, no additional RC-135 re-engining funds were included in the President's fiscal year 1997 budget request. Therefore, the Committee recommends an additional \$100.0 million in fiscal year 1997 to re-engine four additional RC-135 aircraft.



*Pacer Coin*

Pacer Coin is a day/night, all-weather reconnaissance and surveillance system which provides critical intelligence support to theater and other commanders. The Committee recommends an increase of \$1.4 million to make air drop modifications to the Pacer aircraft, giving it a dual-use role.

The Pacer Coin mission is currently being transitioned to the Air National Guard, and the 152nd Air Wing in Reno, Nevada. The Nevada Air National Guard is also transitioning to an air drop mission, and is receiving additional C-130 aircraft dedicated to this mission. By making the Pacer Coin aircraft dual-use, the utilization and mission capability of these aircraft will be significantly broadened. This modification will enable the Pacer Coin aircraft to maintain a primary mission of air drop/transport, while also preserving the unique imagery capabilities of the Pacer Coin for use by theater and other commanders when needed.

*Over-the-Horizon Backscatter Radar*

The OTH-B radar was originally built in the late 1980's to provide long-range, wide-area, all altitude surveillance and tactical early warning of aircraft approaching North America to provide NORAD and the national command authority (NCA) with maximum warning/decision time. This system has been in warm storage since 1994 with limited operations in FY 1994. The system is not as capable technically as other U.S. radar systems, therefore, the Committee recommends termination of this program, and a reduction to the request of \$5.7 million.

## RENEWAL AND REFORM OF U.S. INTELLIGENCE

Title VII of the bill marks the culmination of many years of efforts by this Committee and the Congress to renew U.S. intelligence.<sup>1</sup> Prompted by changes that had taken place in Eastern Europe, the Committee began in December 1990 a comprehensive review of the missions, functions, and organizational arrangements for the Intelligence Community. During the course of that review, the staff conducted nearly 130 interviews with current and former government officials and the Committee held two hearings on the specific subject of intelligence reorganization. In addition, intelligence capabilities and reorganization were discussed extensively at the confirmation hearings of Robert Gates to be Director of Central Intelligence.

While this review was underway, two significant developments highlighted the need to reassess the Intelligence Community. The first of these was the U.S. involvement in the Persian Gulf war. During and after the conflict, the Committee received considerable testimony both in hearings and briefings with respect to the quality and timeliness of intelligence support. This testimony indicated serious problems in existing organizational structures, particularly with regard to the exploitation and dissemination of imagery and regarding consolidation of intelligence support under U.S. field

<sup>1</sup> In 1987, 1988 and 1989, hearings and legislation recognized the need to integrate the various intelligence entities into a more coherent, effective and efficient structure by creating a Director of National Intelligence with greater authority over the Intelligence Community.

commanders. The other major development during this time period was the collapse of Communist Party rule in the Soviet Union and the ascendancy of pro-democracy reform elements, signaling the end of the Cold War.

In February, 1992, then-Committee Chairman David Boren introduced a comprehensive proposal for Intelligence Community reform and reorganization. The Committee held five public hearings and one closed hearing on this legislation, with a total of 14 witnesses. While most of this ambitious effort was not enacted, these efforts did result in the adoption, for the first time in law, of a comprehensive statement of the responsibilities and authorities of the agencies and officials of the U.S. Intelligence Community.

Efforts to reform the Intelligence Community gained momentum again in 1994 in the wake of the Ames espionage case and the revelation that the NRO had built an expensive new building without adequately informing this Committee. At the same time, there was a growing sense in Congress that the Intelligence Community needed clearer direction regarding its post-Cold war mission.

To address these concerns, Congress—at the initiative of this Committee—included in the 1995 Intelligence Authorization bill a provision to establish a commission to “produce a credible, independent, and objective review of the Intelligence Community.” The President signed the bill creating the “Commission on the Roles and Capabilities of the U.S. Intelligence Community” on October 14, 1994.

#### THE BROWN COMMISSION

The Commission on the Roles and Capabilities of the U.S. Intelligence Community was charged with reviewing “the efficacy and appropriateness” of U.S. intelligence activities in the “post-cold war global environment.” The Commission’s statutory charter set forth 19 specific issues to be addressed by the Commission in its final report, which was to be submitted to the President and the congressional intelligence committees no later than March 1, 1996, a date selected to ensure that the Commission’s recommendations could be considered during the legislative session of the 104th Congress.

The 17-member Commission consisted of nine members selected by the President and eight selected by the leaders of the House and Senate.

The Commissioners selected by the President included former Secretary of Defense Les Aspin and former Senator Warren Rudman, who were appointed as Chairman and Vice Chairman respectively; Zoe Baird, General Counsel of Aetna Life & Casualty Company; Ann Caracristi, a former Deputy Director the National Security Agency; Anthony Harrington, a lawyer in Washington, D.C.; General Lew Allen, a former Chief of Staff of the Air Force and former Director of the National Security Agency; Stephen Friedman, former chairman of Goldman Sachs & Co.; Robert Hermann, a former Director of the National Reconnaissance Office; and Paul Walfowitz, a former Under Secretary of Defense for Policy. The Commissioners appointed by Congress included Representative Norman Dicks (D-WA); former Representative Tony Coelho; Senator James Exon (D-NE); former Senator Wyche Fowler; Rep-

representative Porter Goss (R-FL); General Robert Pursley, a former Commander of U.S. Forces in Japan; Senator John Warner (R-VA); and David Dewhurst, a Houston businessman. The Commission assembled a staff of a number of former intelligence professionals headed by L. Britt Snider, former Chief Counsel of this Committee.

The Commission held its first meeting on February 3, 1995, and met for one or two days each month from March 1995 through February 1996. The Commission heard formal testimony from 84 witnesses and its staff interviewed over 200 present and former government officials as well as knowledgeable persons from the media, academia, and industry. Commissioners also visited a number of countries with whom the U.S. has cooperative relationships in the intelligence area.

On May 21, 1995, Commission Chairman Les Aspin died unexpectedly after a stroke. He was replaced as Chairman by former Secretary of Defense Harold Brown.

The Brown Commission submitted a 200-page report to the President and the congressional committees on March 1, 1996. The report, entitled "Preparing for the 21st Century: An Appraisal of U.S. Intelligence," concluded that:

[T]he United States needs to maintain a strong intelligence capability. U.S. intelligence has made, and continues to make, vital contributions to the nation's security, informing its diplomacy and bolstering its defenses. While the focus provided by the superpower struggle of the Cold War has disappeared, there remain sound and important roles and missions for American intelligence.

At the same time, the Brown Commission concluded that the effectiveness and efficiency of the Intelligence Community need to be improved in a number of ways. The Commission's report contains numerous specific recommendations for improving the performance of the Intelligence Community.

Dr. Brown and Senator Rudman presented the Brown Commission's conclusions in formal testimony before the Committee on March 6. As a courtesy, Chairman Specter and Vice Chairman Kerrey introduced the Commission's legislative package as S.1593 on the same day.

#### SCOPE OF THE COMMITTEE'S RECENT REFORM REVIEW

While the Brown Commission was conducting its review, this Committee continued its own efforts to examine the appropriate role of the Intelligence Community in the post-Cold War world and how to optimize the structure of the Community to accomplish that mission. The Community held six hearings and three Member-level briefings to consider aspects of the Renewal and Reform efforts. Twenty-six witnesses provided the Committee with views from a variety of perspectives. The Committee heard from a broad array of intelligence consumers, including representatives from the Departments of Justice, State, Energy, Defense, and Treasury. Witnesses also included former Directors of Central Intelligence, as well as the current DCI, former leaders of this Committee, academics, and representatives from organizations that had done their own review of needed reforms in the Intelligence Community. In

addition, the Committee staff conducted numerous interviews and carefully reviewed the results of extensive work done by the Brown Commission.

#### THE COMMITTEE'S REFORM PROPOSALS

In the Committee's view, the Brown Commission did an excellent job identifying the key issues relating to the reform of the Intelligence Community. The Committee agrees with many of the Commission's recommendations, particularly regarding institutional mechanisms for getting policymakers more involved in identifying and prioritizing their information needs and for addressing transnational threats, ways to improve intelligence analysis, and the need to enhance accountability and oversight—to include declassifying the aggregate amount appropriated for the intelligence budget and abolishing term limits for membership on the intelligence oversight committees. The Committee believes, however, that the Brown Commission did not go far enough in providing the Director of Central Intelligence with both the necessary authority and the necessary support structure to ensure improved efficiency, effectiveness, and accountability in the U.S. Intelligence Community.

#### *DCI authority*

The changes brought about by the collapse of the Soviet Union have dramatic implications for U.S. intelligence efforts. The demands for rapid responses to diverse threats in a rapidly changing world would necessitate a streamlined Intelligence Community and a DCI with clear lines of authority. This is lacking in the intelligence bureaucracy that emerged during the bipolar world of the Cold War.

As the Brown Commission noted, "The Intelligence Community \* \* \* has evolved over nearly 50 years and now amounts to a confederation of separate agencies and activities with distinctly different histories, missions, and lines of command." Recognizing the pitfalls of decentralized intelligence—less attention devoted to non-Defense requirements, waste and duplication, the absence of objective evaluation of performance and ability to correct shortcomings, and loss of synergy—the Commission supported centralized management of the Intelligence Community by the DCI. The Commission concluded, however, that the DCI has all the authority needed to accomplish this objective of centralized management, if only he spent less time on CIA matters and had the budget presented to him in a clearer fashion.

The Committee believes that the current disincentives for intelligence to operate as a community, reduce unnecessary waste and duplication, and become more effective and efficient in meeting the Nation's needs can only be overcome by enhancing the DCI's statutory authority over the budget and administration of all non-tactical intelligence activities and programs. A key issue for Congressional oversight of the Intelligence Community is accountability. It has become increasingly clear that a single manager, the DCI, must be accountable for the success or failure of the Intelligence Community. Therefore, the DCI must be given the authorities he needs to carry out this responsibility.

*Control of intelligence budget*

“The annual budgets for U.S. intelligence organizations constitute one of the principal vehicles for managing intelligence activities,” noted the Brown Commission in its Report. “How effectively and efficiently the Intelligence Community operates is to a large degree a function of how these budgets are put together and how they are approved and implemented.” The Committee agrees with this assessment and concludes that the DCI must have ultimate control over the execution of the principal national elements of the National Foreign Intelligence Program budget if he or she is to effectively manage the Intelligence Community.

*Need for “Goldwater-Nichols” jointness in the intelligence community*

Similarly, there is a need to bring the “Goldwater-Nichols” concept of “jointness” to the Intelligence Community. The Brown Commission recommended that the DCI establish common Intelligence Community standards in the areas of skills proficiencies, personnel evaluation systems, trial period performance criteria, personnel allowances and benefits, and personnel and physical security. It further recommended that the DCI establish cooperative arrangements within the Intelligence Community in the areas of job recruiting, background investigations, training programs, and facilities. The Commission acknowledges that similar recommendations have been made by numerous studies over the years and supported by Intelligence Community leaders, yet little or no progress has been made in implementing them. The Committee is convinced that the same fate awaits these latest recommendations unless the DCI is given not only the mandate but the authority to effect implementation.

*DCI management support*

Once the DCI is given the authority needed to implement resource and administrative decisions throughout the Community, it is critical that he or she have a support structure to meet that enhanced Community role. The Brown Commission considered organizational arrangements for the Intelligence Community and concluded that the existing Deputy Director for Central Intelligence should be replaced by two deputies: one for the Community and one for the CIA.

The Committee believes that the Brown Commission’s proposal will not adequately support the DCI in overcoming bureaucratic tendencies, honed over 50 years, that have frustrated previous efforts to bring greater coherency and coordination to Intelligence Community efforts. In our view, the institutional structure to assist the DCI in managing the Community should be established along functional, rather than organizational, lines. Accordingly, the Committee recommends the establishment of three Assistant Directors of Central Intelligence: an Assistant Director for Analysis and Production, an Assistant Director for Collection, and an Assistant Director for Administrative Support.

The *Assistant Director for Analysis and Production* (ADCI/A&P) would be responsible for overseeing intelligence analysis and production throughout the Intelligence Community: establishing prior-

ities and standards of analysis and production; monitoring allocation of analytical resources and identifying unnecessary duplication; tasking the Assistant Director for Collection with collection requirements; and providing analytical and production support to the President, National Security Council, and National Economic Council. Departments such as State, Defense, and Treasury would retain their residual analytic capability and provide competing analytic views.

The *Assistant Director for Collection* would be responsible for ensuring that national intelligence collection meets requirements in an efficient and effective manner by tasking the collection disciplines—signals intelligence, imagery intelligence, human intelligence, and measurements and signatures intelligence; managing and evaluating the acquisition of collection systems and their operations; and developing a single, integrated plan, program and budget for national intelligence collection.

The Committee believes that consolidating the collection disciplines is a useful way to enhance efficiency and effectiveness, but the benefits are limited unless these “stovepipes” are embedded in a structure that ensures cross-INT coordination at the top, when requirements are levied and procurement decisions are made, and at the other end when collected information is disseminated and analyzed. Having a single manager for collection and one for analysis and production—and ensuring strong links between the two—seems the most compelling structure for ensuring these cross-fertilization.

In addition, we would encourage the continued cooperation between analysts and collectors across the board—not just in HUMINT, Analysts should be encouraged to spend time on rotation in the various collection agencies to lend substantive expertise against increasingly technical targets and to return to their home offices with a greater understanding of the collection disciplines.

Finally, the Committee would establish a *Assistant Director for Administration* who would have responsibility for personnel management, including education and training; information management systems; telecommunications systems; finance and accounting; security; and procurement of supplies and support services across the Community.

#### *Legislative recommendations*

The Committee’s legislative proposals are set forth in Title VII of this bill. Title VII would, among other things, create Committees on Foreign Intelligence and Transnational Threats within the National Security Council; establish the three Assistant Directors of Central Intelligence described above; give the DCI additional authorities over the intelligence budget, including budget execution authority over most of the NFIP; give the DCI the right to concur in the appointments of the heads of NSA, NRO, and NIMA and to be consulted on the appointments of the heads of DIA, the State Department’s Bureau of Intelligence & Research, the Energy Department’s Office of Nonproliferation & National Security, and the FBI’s National Security Division.

Title VII would also establish an Office of Congressional Affairs for the Intelligence Community, a statutory General Counsel for

the CIA, and an Intelligence Community Senior Executive Service that would subsume the separate senior executive services for the individual intelligence agencies.

*The Directorate of Operations*

Many of the most visible problems with the Intelligence Community involve the Directorate of Operations at CIA (the "DO"). Indeed, much of the Committee's oversight resources over the past year have been devoted to examining issues such as CIA's activities in Guatemala and Honduras, the so-called "French Flap" involving allegations that CIA attempted to recruit French government officials to provide economic intelligence, and the DO's dissemination of reports from assets known or suspected to be under the control of the KGB.

The insights gained from the Committee's oversight of DO activities and policies have been shared with the Director of Central Intelligence and reflected in a number of changes he has initiated in personnel and in policies. In addition, many of the Committee's proposals are designed to address problems identified through the Committee's oversight of the DO. For example, the Committee on Foreign Intelligence and the Committee on Transnational Threats will provide the Intelligence Community, and particularly the DO, with clearer guidance on high-profile policy issues such as whether intelligence agencies should collect economic or environmental intelligence; whether they should target friendly governments for intelligence collection; whether they should use certain forms of cover; and whether they should enter into relationships with individuals or other governments whose conduct may not live up to U.S. standards. Similarly, the Assistant Director of Central Intelligence for Collection will ensure that high-risk HUMINT collection is only employed where use of technical collection is not a feasible alternative for obtaining the needed information.

Another key issue is ensuring that the vast majority of outstanding young men and women who work in the DO are given the quality of management and career opportunities that will make their public service personally rewarding, despite the lack of publicity surrounding their many successes and the abundance of criticism that greets each and every lapse. The Committee's proposal for a Senior Executive Service for the Intelligence Community is a first step in that direction. We understand the Administration is preparing a comprehensive personnel reform package and look forward to examining the legislation when it is finalized. In addition, the Committee agrees with the Commission's recommendations regarding strengthening management of the Directorate of Operations in the CIA, including creating specialized management tracks and improving training.

*Other recommendations*

The Committee also endorses a number of additional non-legislative recommendations made in the Brown Commission report. For example, the Committee agrees with the Commission's recommendations regarding promoting closer links between intelligence producers and consumers, including providing daily briefings to, and assigning intelligence aides to the staffs of, senior pol-

icymakers. While analysts must be wary of politicization, it is also clear that intelligence community efforts will go for naught unless intelligence producers are close enough to consumers to identify their needs on a daily basis. The Committee urges CIA to consider implementing the Brown Commission's suggestions for improving the quality of analysis, including providing more travel and educational opportunities for analysts and providing for more non-managerial senior analyst positions.

Finally, the Committee strongly supports the Commission's recommendation that the DCI develop a database of Community-wide intelligence programs and activities to assist him in making resource allocation decisions and tracking spending. In the Committee's view, the development of such a database, together with the establishment of a permanent staff of program and budget analysts, is a key element to strengthening the DCI's control of the Community.

### *Conclusion*

The drumbeat for change in the Intelligence Community, initiated in earnest with the fall of the Soviet empire, amplified in recent months and years by a distressingly rapid succession of public scandals, and informed by thoughtful studies such as those undertaken by the Brown Commission, the Council on Foreign Relations, Georgetown University's Institute for the Study of Diplomacy, and others, has brought us to a propitious moment. Just as years of efforts aimed at reorganizing the Department of Defense finally came to fruition with passage of the "Goldwater-Nichols" legislation in 1986, years of efforts by this Committee and others to reform the Intelligence Community may finally succeed in significantly enhancing this nation's ability to meet the security challenges of the next century, renewing the Intelligence Community's sense of mission, and beginning the process of renewing the support of the American people of this essential capability.

### THE NATIONAL IMAGERY AND MAPPING AGENCY

The Committee was disappointed that the Administration had not completed drafting the legislation necessary to create the proposed National Imagery and Mapping Agency before the Committee marked-up this bill. Nevertheless, the Committee has included provisions establishing NIMA, providing for its leadership, and defining its mission. A key concern of this Committee is ensuring that NIMA serves all intelligence consumers, national and tactical, military and non-military.

During the Cold War, the overriding threat was perceived to be the Soviet military. In the Post-Cold War world, many of the greatest threats to our security often do not lend themselves to military answer—terrorism, proliferation, political instability in the emerging democracies and the stress on those fragile institutions exacerbated by organized crime, to name a few examples. Cooperative bilateral and multilateral relationships in law enforcement, intelligence, and diplomacy present more options for addressing potential crises and endeavoring to avoid the need to commit U.S. troops. In addition, economic security is an increasingly important aspect of our national security, with the U.S. Trade Representative and



the Secretary of Commerce, for example, playing important roles. Each of these potential avenues for U.S. action needs intelligence support to optimize their prospects for success.

Imagery has been critical for national policymaking going back at least to the Cuban Missile Crisis. More recently, it has played a significant role in UN Representative Madeleine Albright's efforts to convince the international community to support continued sanctions on Iraq, in the negotiation of the Dayton Peace Accords, and in the efforts to bring Bosnian war criminals to justice, to cite just a few examples. It is essential that imagery collection, like signals and human collection, be organized and managed in a manner that ensures it will continue meeting these national needs.

#### INTELLIGENCE COMMUNITY INSPECTORS GENERAL

The Intelligence Community agencies are becoming increasingly interconnected and, as a result, Intelligence Community Inspectors General (IG) must work closely with each other on a growing number of interrelated issues. This has clearly resulted in more cooperation and coordination between the IGs. However, there is no central point of coordination or accountability for Intelligence Community IG issues, particularly as they relate to investigations whose subject matter crosses multiple agencies. For example, the Guatemala investigation spanned several agencies (CIA, DOD, Justice, State), with Inspectors General from each of the agencies providing a separate investigation and report. There was no central IG representing the overall intelligence interests, addressing overarching intelligence themes or weaknesses, or providing a consolidated report on the Guatemala matter.

Other Intelligence Community Inspector General issues that have occasionally caused this Committee concern in the past include:

- Lack of effective coordination between the Intelligence Community Inspectors General, particularly between the Administrative and Statutory IGs.

- Lack of consistent IG coverage of high risk or high dollar intelligence programs in certain agencies.

- Lack of effective management support and attention to the Inspectors General and their products and recommendations.

- Inconsistent training and professional standards for IG employees.

In addition, concerns have been expressed for intelligence officials outside the IG community regarding the professionalism, experience and training of the IG staffs.

The Committee has considered a variety of options for addressing these concerns, including establishment of an Intelligence Community Inspector General. Prior to initiating these or other actions however, we direct that each of the Inspectors General, both statutory and non-statutory, from each organization concerned with intelligence matters, including CIA, CIO, DIA, DoD, Energy, the Military Services, NRO, NSA, State, Treasury and Justice provide by January 15, 1997 a report to the Committees describing the reviews involving joint intelligence issues they have participated in since January 1, 1994; what their role was in each review effort; how they are currently staffed and organized to address Intel-

ligence Community issues (including the number of personnel who have worked on the intelligence projects); and the percentage of their total projects since January 1, 1994 which concern intelligence matters; the percentage of their total intelligence projects since January 1, 1994 that are joint issues with other agencies; the formal and informal methods by which they communicate with the other Inspectors General which deal with Intelligence Community issues and the effectiveness of those methods of communication. In addition, we ask that each of the IGs make any recommendations they deem appropriate for improving coordination and communication between the IGs, as well as individual IG assessments of the feasibility and desirability of creating an IG for the Intelligence Community to coordinate all joint intelligence efforts. The individual IG reports to the Committees should also describe how intelligence related IG topics are selected, the training and other professional standards they ascribe to, and how they ensure the implementation of those standards.

#### COMBATING PROLIFERATION

In the view the Committee, the U.S. government at present is not well organized to meet the threat to U.S. national security posed by the worldwide proliferation of chemical, biological or nuclear weapons or devices, and their delivery systems. More than 80 departments, agencies and other organizations, including the Departments of Defense, State, Commerce, Energy, Health and Human Services and Justice, as well as the National Security Council and the intelligence community, have responsibilities for combating proliferation. Yet no one individual or organization is responsible for coordinating the political, military, diplomatic, economic and intelligence resources that are required to prevent or roll back proliferation.

Moreover, the Committee believes that there is unnecessary duplication of effort and other inefficiencies among the departments and agencies that have responsibilities in this area, and that streamlining is required.

Organizational inefficiencies and a lack of central focus and direction have made U.S. efforts to combat proliferation an hoc, reactive and less effective than they could be. Given the extraordinary challenge to U.S. national security posed by the proliferation of weapons of mass destruction (and the means to deliver them), and the current lack of focus within the Federal Government, the Committee believes that a thorough assessment and review of the institutional architecture of the Federal Government is required.

The Committee's authorization bill includes legislation to create a commission to perform such an assessment, and to report to Congress on specific administrative, legislative and other changes it believes are required to improve U.S. performance. It also addresses the threat posed by the spread of so called dual use and other militarily useful technology by requiring the Director of Central Intelligence to report regularly to the Congress on this issue.

#### ECONOMIC ESPIONAGE

The Committee was also concerned about the growing problem of economic espionage in our country. Foreign countries, recognizing

the value of American proprietary economic information, have shifted intelligence resources and are now targeting business and other economic information that will help them compete in the world market. This shift in intelligence targeting poses a new threat to the U.S. national security.

As the Intelligence Community appropriately provides greater emphasis and resources to counterintelligence, it must pay particular attention to this emerging economic threat. The Committee has addressed this threat several times since the end of the Cold War revealed an increased emphasis upon economic spying. Four years of hearings have exposed this problem as one of our greatest counterintelligence threats.

What the Committee is intending to combat is the theft of American proprietary economic information by foreign countries. When one considers the resources that can be brought to bear by the world's former superpowers, American companies, large and small, simply cannot defend themselves. FBI Director Louis Freeh, noting that the United States may lose almost \$100 billion a year to economic espionage, testified before the SSCI and the Senate Judiciary Committee that "the United States has become, in effect, the basic research lab for the world."

Current federal law is inadequate to deal with this problem. Not a single federal law directly addresses the theft of proprietary economic information. As current federal laws provide no systematic approach to the problem, the Administration, the FBI Director, and scores of others have informed the Committee that the United States needs a new, effective, and straightforward law to deal with this problem. Title V provides such a law.

#### 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 1997.

*Section 102* makes clear that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings covered under this title for fiscal year 1997 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, with the approval of the Director of the Office of Management and Budget, in fiscal year 1997 to exceed the personnel ceilings applicable to the components of the Intelligence Community under section 102 by an amount not to exceed two percent of the total of the ceilings applicable under section 102. 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.

*Section 104* provides details concerning the amount and composition of the Intelligence Community Management Account of the Director of Central Intelligence.

Subsection (a) authorizes appropriations in the amount of \$95,526,000 for fiscal year 1997 for the staffing and administration of the various components under the Community Management Account of the Director of Central Intelligence. It also authorizes funds identified for the Advanced Research and Development Committee and the Environmental Task Force to remain available for two years.

Subsection (b) authorizes 265 full-time personnel for the components under the Community Management Staff for fiscal year 1997 and provides that such personnel may be permanent employees of the Staff or detailed from various elements of the United States Government.

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

*Title II—Central Intelligence Agency Retirement and Disability System*

*Section 201* authorizes appropriations in the amount of \$184,200,000 for year 1997 for the Central Intelligence Agency Retirement and Disability Fund.

*Title III—General provisions*

*Section 301* provides that appropriations authorizes by the conferee report for salary, pay, retirement and other benefits for federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

*Section 302* provides that the authorization of appropriations by the conference report 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.

*Section 303* extends for an additional two years the authority granted by section 303 of the Intelligence Authorization Act for Fiscal Year 1996 for the President to stay the imposition of an economic, cultural, diplomatic, or other sanction or related action when the President determines and reports to Congress that to proceed without delay would seriously risk the compromise of an intelligence source or method or an ongoing criminal investigation.

The FY 1996 Act terminates the President's authority one year after enactment, on January 6, 1997. This sunset provision was added last year during conference with the House to give Congress an opportunity to see how the delay authority would be implemented. Because the bill ultimately was not signed into law until January, there is not yet a sufficient record on implementation. Thus, the Committee is extending the application of this provision for an additional two years.

*Section 304* requires the DCI to issue regulations, within three months of enactment of this legislation, requiring each current or new employee of the Central Intelligence Agency to agree in writing not to represent, or advise the government of, or any political party of, a foreign country, for a period of five years after the ter-

mination of the employee's employment with the Central Intelligence Agency.

The section is motivated by reports the Committee has received that some former CIA employees have, following retirement from the CIA employment, agreed to serve as advisers to the intelligence services of foreign countries or as representatives of such services in their dealings with other countries. The Committee believes that opportunities for conflicts of interest, or at least the appearance of a conflict, will arise if CIA employees, who frequently must deal with foreign governments during the course of their CIA employment, are permitted to work for foreign governments immediately following termination of their employment by CIA. Moreover, if a former CIA employee who acts as a representative of a foreign government uses contacts with third governments developed as result of his or her Agency employment, it may result in confusion regarding whether the former CIA's employee's activities are sanctioned by the U.S. Government.

To avoid such possible conflicts, the Committee believes that there should be a five-year "cooling off" period following a CIA employee's departure from the Agency during which the former employee is prohibited from working for a foreign government.

The Committee directs the DCI to implement a regulation requiring all CIA employees to sign a post-employment agreement, similar to the non-disclosure and pre-publication review agreements currently required of all CIA employees, that the employee will not work for a foreign government within five years of leaving the CIA. The DCI would be permitted to take disciplinary action, including termination of retirement benefits, against any employee found to have violated his or here agreement.

*Section 305* of the bill requires the President to submit to Congress, within 90 days of enactment of this legislation, a report on the implementation of Executive branch proposals to improve oversight of the intelligence community budget. On April 9, 1996, the President submitted a report to Congress describing proposed Executive branch actions to improve budget oversight. The Committee believes the actions, if fully implemented, will be a major step in strengthening oversight of the intelligence budget by the Executive branch. However, the Committee is concerned that the Intelligence Community, and specifically the National Reconnaissance Office, may not be able to comply with the actions detailed in the report. Accordingly, the Committee is requesting the President to prepare a status report on the implementation of his proposals. Specifically, the report is to include:

The extent to which NFIP programs are now held to requirements comparable to other Department of Defense components in the implementation and execution of the Chief Financial Officers Act of 1990 and the Federal Financial Management Act of 1994.

The extent to which NFIP programs now submit to the Office of Management and Budget budget justification materials and execution reports similar to those submitted by non-intelligence components of the Department of Defense.

The extent to which the National Reconnaissance Office submits to the Office of Management and Budget, the Community

Management Staff, and the Office of the Secretary of Defense detailed information related to major new acquisitions.

The extent to which the National Reconnaissance Office has submitted to the Office of Management and Budget, the Community Management Staff, and the Office of Secretary of Defense monthly budget execution reports similar to the budget execution reports submitted by non-intelligence Department of Defense programs.

*Title IV—Federal Bureau of Investigation*

Section 401 amends Sections 2703 and 2709 of Title 18, United States Code. This amendment is a clarification of the meaning of the phrase “telephone toll billing records” as used in 2703 and 2709. Congress intends to make clear, with this amendment, that the phrase applies to both local and long distance telephone toll billing records.

Section 2703 of Title 18, United States Code, among other things, authorizes law enforcement to obtain various records from providers of electronic communication during the course of an official investigation, pursuant to an administrative subpoena, a grand jury subpoena, or trial subpoena. The records that can be obtained pursuant to these subpoenas include among other things, “the name, address, *telephone toll billing records*, telephone number \* \* \*” Section 2709 of Title 18, United States Code, authorizes the Director of the FBI to obtain similar records from providers of wire and electronic communications during the course of an authorized foreign counterintelligence investigation, to include “the name, address, length of service, and *toll billing records*.”

The precise interpretation of “telephone toll billing records” was recently called into question by Southwestern Bell Mobile Systems, Inc. Specifically, Southwestern Bell questioned whether the term referred to *local* as well, as *long distance* records. The issue arose in March of 1995, when Southwestern Bell received two grand jury subpoenas issued pursuant to Section 2703 for airtime telephone toll records. Southwestern Bell filed a motion to partially quash both subpoenas arguing that the words “telephone toll billing records,” as used in Section 2703, meant only information related to long distance cellular airtime records.

The issue presented to the District Court was whether Congress intended by its use of the term “telephone toll billing record” to authorize a grand jury to obtain by subpoena only long distance billing records. In a May 19, 1995 ruling, the United States District Court for the Western District of Missouri (Bartlett, D.J.) denied Southwestern Bell’s motion to quash the grand jury subpoenas, finding that the “plain meaning of the words ‘telephone toll billing records’ is billing records that contain information which was used or could be used to charge for telephone calls or services.” Based on this finding, the District Court concluded that the term “toll billing records,” as used in § 2703, applies to “all records of calls from or attributed to a particular number.”

Despite this ruling favorable to the government, nothing in the plain wording of the statute or its legislative history is conclusive on this point. The best that the District Court could find is that there was nothing in the plain meaning of the term or in the legis-

lative history which would contradict the ruling. This clearly leaves the interpretation open to other challenges by well-meaning providers concerned about their equities.

It should also be noted that substantial punitive provisions have been added to the civil remedies available to providers, subscribers, or customers aggrieved by any violation of Chapter 121 of Title 18, *United States Code*. Currently, unauthorized access to stored communications, whether for purposes of commercial advantage, malicious destruction or damage, or private financial gain, subjects the perpetrator to not only criminal penalties but civil fines as well. These fines, however, do not include punitive damages, irrespective of the state of mind of the perpetrator. This provision makes clear that if the violation is willful or intentional, such punitive damages as the court may allow can be awarded by a jury. Also, in the case of any successful action to enforce liability under this section, the costs of the action, together with reasonable attorney fees as determined by the court, will be available to an aggrieved plaintiff.

Finally, this provision provides for disciplinary actions if a court determines that any agency or department of the United States has violated Chapter 121 and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation. This provision directs the agency or department to promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

*Title V—Economic Espionage Act of 1996*

*Section 501* contains the short title of this title of the bill.

*Section 502* adds new sections 571–578 to Title 18, U.S. Code that criminalizes theft of economic proprietary information undertaken on the behalf of, or with the intent to benefit, a foreign government or its agent.

*Section 571* sets forth definitions of certain key terms used in the new chapter and builds upon definitions already set out in Chapter 1 of Title 18.

*Section 572(a)* defines the offense of “economic espionage” and punishes the theft or wrongful appropriation, duplication, alteration, destruction, or conversion of proprietary economic information on behalf of a foreign government. Attempts, solicitations, and conspiracies to commit such offenses are also made punishable, as are wrongful receipts, possessions, or purchases of stolen vital proprietary economic information. To make out an offense, the prosecution must show in each instance either that the perpetrator intended to benefit a foreign government, instrumentality, or agent or had actual knowledge or reason to believe that they are acting on behalf of a foreign government, instrumentality, or agent.

The intangible nature of vital proprietary economic information requires the section to be written broadly enough to cover both traditional instances of theft, where the object of the crime is removed from the rightful owner’s control and possession, as well as non-traditional methods of misappropriation involving electronic duplication or alteration in which the original property never leaves the dominion or control of the rightful owner. The maximum punish-

ments specified recognize the gravity of the offenses involved and their concomitant effect on the Nation's economy and security.

Section 572(b) specifies a separate maximum punishment for an organization found guilty under this section. The higher maximum fine reflects the significant potential financial benefit to the offending organization from the theft and is designed to ensure that the fine is viewed as something more than a cost of doing business.

Section 572(c) makes clear that it is not a violation of law in contravention of Section 571 to disclose proprietary economic information in the case of appropriate disclosures to Congress or disclosures that are deemed essential to reporting a violation of United States law.

Section 573 is designed to permit recapture of both the proceeds and implements of the offenses specified in the chapter. These provisions may prove especially effective as the proceeds of economic espionage may be staggering. The section incorporates through reference existing law to provide for procedures to be used in the detention, seizure, forfeiture, and ultimate disposition of properly forfeited proceeds under the section. It provides for an in personam action against the offender, rather than one against the property itself, and preserves the rights of innocent third parties.

Section 574 authorizes the President to prohibit, consistent with international obligations, for a period of up to 5 years, the importation into, or exportation from, the United States, whether by carriage of tangible items or by transmission, of any merchandise produced, made, assembled, or manufactured by a person convicted of any offense described in subsection 571, or in the case of an organization convicted of any offense described in subsection 571, its successor entity or entities. Any sanctions so imposed are enforceable through a civil action that may be brought by the Secretary of the Treasury and which could result in the imposition of a civil penalty of not less than \$100,000. Imposition of such a penalty must be in accordance with applicable Custom laws.

Section 575 is to rebut the general presumption against the extraterritorial effect of U.S. criminal laws, this section makes it clear that Section 571 is meant to apply to certain conduct occurring beyond U.S. borders. To ensure some nexus between the assertion of such jurisdiction and the offense, extraterritoriality is provided for only if the offender is a U.S. person or an act in furtherance of the offense is committed in the United States. "United States" is defined in Chapter 1 of Title 18. In pursuing such cases, it is expected that the Department of Justice will focus its investigative and prosecutorial resources on those in which there has been a substantial harm to U.S. interests.

Section 576 makes clear that non-Federal remedies, whether civil or criminal, for dealing with the theft or misappropriation of economic proprietary information are not preempted by the Act. Several states have criminalized the theft of intellectual property but enforcement may be frustrated by the ease with which such property is transferred across state or national boundaries.

Section 577 requires a court to preserve the confidentiality of alleged proprietary economic information during legal proceedings, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other



applicable laws. This preserves the information's confidential nature and, hence, its value. Without such a provision, owners may be reluctant to cooperate in prosecutions for fear of exposing their proprietary information to public view—thereby destroying its value.

Section 578 makes clear that this chapter does not prohibit or impair any lawful activity conducted by a law enforcement or regulatory agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States.

*Title VI—Combating Proliferation of Weapons of Mass Destruction Act of 1996*

*Section 601* contains the short title of this title of the bill.

*Section 611* authorizes the establishment of a commission, to be known as the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction (the Commission). This section directs that the Commission would be composed of eight members, with four appointed by the President; one appointed by the Majority Leader of the Senate; one appointed by the Minority Leader of the Senate; one appointed by the Speaker of the House of Representatives; and one appointed by the Minority Leader of the House of Representatives. Section 611 also outlines the period of appointment of members of the Commission; vacancies; meetings; and the selection of a Chairman and Vice Chairman.

*Section 612* describes the duties of the Commission. In general, the Commission would be responsible for carrying out a thorough study of the organization of the Federal Government, with respect to combating the proliferation of weapons of mass destruction (WMD). This section describes specific requirements: to assess the current structure and organization of the Federal departments and agencies, including elements of the intelligence community, that have responsibilities for combating proliferation of WMD; and to assess the effectiveness of the cooperation between elements of the U.S. intelligence community and the intelligence services of foreign governments relating to WMD proliferation. Section 612(b) would require that the Commission make specific recommendations to improve the performance of the Federal Government with respect to combating WMD proliferation. Section 612(c) would require the Commission to submit to Congress a report containing detailed findings and recommendations no later than 18 months after the date of the enactment of this Act.

*Section 613* describes the powers of the Commission, including the power to hold hearings, take testimony and receive such evidence as the Commission considers advisable. This would include any information, both classified and unclassified, from any government department, agency or other organization the Commission considers necessary to carry out its duties. Finally, this section discusses the use of the United States mails, and the use of gifts or donations of services or property.

*Section 614* sets forth the compensation for members of the Commission. Members who are not officers or employees of the Federal Government would be compensated at a rate equal to the daily equivalent of the annual rate of basic pay described for level IV of

the Executive Schedule. Members who are officers or employees of the Federal Government would receive no additional compensation for their work as members of the Commission. This section describes the travel allowances and per diem in lieu of subsistence that would be allowed to Commission members. This section contains provisions for the hiring and compensation of Commission staff personnel, including the detail of Federal Government employees.

*Section 615* provides that the Commission will terminate 60 days after the date on which the Commission submits its report under section 612.

*Section 616* states that for the purposes of this Act, the term intelligence community would have the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

*Section 617* authorizes to be appropriated for the Commission in fiscal year 1997 such sums as may be necessary for the Commission to carry out its duties. This section directs that the amounts appropriated pursuant to this authorization of appropriations would remain available until the termination of the Commission.

*Section 621* directs that not later than 6 months after the date of enactment of this Act, and every 6 months thereafter, the Director of Central intelligence would submit to Congress a report on the acquisition of dual-use and other technology useful for the development and production of WMD during the preceding 6 months. This section directs that the report would include a discussion of the trends in the acquisition of such technology by such countries. This section notes that the report would be submitted in an unclassified form, but may include a classified annex.

*Title VII—Intelligence Activities Renewal and Reform Act of 1996*

*Section 701*

*Section 701* contains the short title of this title of the bill.

*Section 702*

*Section 702* amends Section 101 of the National Security Act of 1947 by adding a new subsection (h) which creates a Committee on Foreign Intelligence (CFI) of the National Security Council. The CFI would consist of the Director of Central Intelligence, the Secretary of State, the Secretary of Defense, and the Assistant to the President for National Security Affairs, who would serve as Chairman of the CFI.

The purpose of the CFI, the creation of which was recommended by the Brown Commission, would be to provide a better institutional mechanism to provide policy-level guidance for the conduct of U.S. intelligence activities. The CFI would identify the intelligence required to address U.S. national security interests, establish priorities to address these requirements, and evaluate the performance of the intelligence community in satisfying intelligence requirements. The NSC has on occasion issued statements of intelligence requirements, but the Committee believes that the process for setting requirements and priorities should be institutionalized and should be performed on a regular basis.

The CFI would also establish policy guidelines for intelligence activities, such as whether intelligence agencies should collect economic or environmental intelligence; whether they should target friendly governments for intelligence collection; whether they should use certain forms of cover; and whether they should enter into relationships with individuals or other governments whose conduct may not live up to U.S. standards. Intelligence agencies have historically been left to make these difficult decisions themselves; in the Committee's view, these decisions should be made at the policy level.

The Committee anticipates that the CFI would meet several times each year and, as recommended by the Brown Commission, would be assisted by a subordinate "Consumers Committee" composed of senior representatives of principal intelligence producers and consumers. The Consumers Committee would meet more frequently and provide continuous, ongoing guidance with respect to intelligence requirements and priorities as well as feedback on the performance of the Intelligence Community.

The CFI would be required to prepare an annual report for the NSC and the DCI on its activities.

The President recently announced his intent to create a CFI by executive order, as recommended by the Brown Commission. The Committee applauds the President's decision to create the CFI but believes that the entity should be created by statute rather than by executive order to ensure continuity from Administration to Administration.

### *Section 703*

*Section 703* would amend Section 109 of the National Security Act of 1947 to require the President to submit to Congress, no later than January 31 of each year, an annual report on U.S. intelligence requirements and priorities and the performance of the U.S. Intelligence Community. Section 109 currently requires the DCI to submit an annual report describing the activities of the intelligence Community during the previous year, including significant successes and failures.

Rather than require the Executive branch to prepare two separate but related intelligence reports, the Committee believes that an intelligence report submitted by the President could cover much of the same material previously submitted by the DCI but would focus more on requirements and priorities. Although the Committee has chosen not to request a copy of the annual report submitted by the CFI to the President, as required by Section 701 of this bill, the Committee expects that the President's annual report would be based largely on the findings and conclusions of the CFI.

The bill states that the report should be submitted in unclassified form but may have a classified annex. It is the Committee's intention that the unclassified version should describe the President's intelligence requirements, as well as intelligence successes and failures, in as much detail as possible, consistent with the protection of sources and methods. The classified version should specify requirements and priorities in sufficient detail to assist the Congress in making resource allocation decisions.

In addition, Section 108 of the National Security Act will continue to require the President to submit to Congress an annual "national security strategy report" which identifies U.S. national interests and sets forth a national security strategy. The Committee expects that the President's annual report on intelligence, which would be required to be submitted at the same time as the national security strategy report, would describe the intelligence required to address the national security interests identified by the President in this report.

#### *Section 704*

*Section 704* amends Section 101 of the National Security Act of 1947 by adding a new subsection (i) which would establish a Committee on Transnational Threats of the National Security Council. The Committee would consist of the DCI, the Secretary of Defense, the Secretary of State, the Attorney General, and the Assistant to the President for National Security Affairs, who would serve as the Committee's chairperson.

The creation of such a Committee was recommended by the Brown Commission, which found that the Federal government is not well organized to combat certain "transnational" activities, such as international terrorism, drug trafficking, weapons proliferation, and organized crime, that threaten the national security of the United States. (The Brown Commission referred to transnational activities as "global crime" to emphasize their links to global criminal elements. The Committee prefers to continue to refer to such activities as "transnational threats" to emphasize, as discussed below, that law enforcement is only one of several possible Federal government responses to the problem.)

A number of federal departments and agencies play important roles in combating transnational threats, but their activities are not well coordinated. Moreover, in the absence of higher level direction, law enforcement agencies have usually been left to take the lead. This has often resulted in conflicts with other agencies, including the Intelligence Community. In the Committee's view, a high-level group is needed to decide, as a policy matter, when to give priority to law enforcement, to intelligence, or to foreign policy or other considerations in responding to transnational threats. The Committee believes that a committee of the National Security Council would be best suited to fulfill this role. As with the Committee on Intelligence, the Committee believes the Committee on Transnational Threats should be established by legislation.

The Committee on Transnational Threats would identify transnational threats; develop strategies to respond to them in a coordinated way; assist in resolving operational differences among federal departments and agencies; develop policies and procedures to ensure the effective sharing of information among federal departments and agencies, including between the law enforcement and foreign policy communities; and develop guidelines for coordination of federal law enforcement and intelligence activities overseas.

The Department of Justice has objected to giving the Committee on Transnational Threats authority to "direct" law enforcement activities on the ground that law enforcement activities should not be

directed on the basis of considerations unrelated to the enforcement of law. In the Committee's view, one of the key reasons to create a high-level Committee on Transnational Threats is to ensure that considerations other than law enforcement are taken into account in the Federal Government's response to terrorism and other transnational threats. The Attorney General and law enforcement officials would still be responsible for directing law enforcement operations on a day-to-day basis, but the broader policy decisions regarding whether to give priority to law enforcement, or to intelligence, or to foreign policy interests, should be made at a higher level.

#### *Section 705*

*Section 705* amends Section 102 of the National Security Act of 1947 to add a new subsection (d) that establishes an Office of the Director of Central Intelligence. The Office would include the DCI, the DDCI; the newly established positions of Assistant DCI for Collection, Assistant DCI for Analysis and Production, Assistant DCI for Administration, the National Intelligence Council, and such other offices as the DCI may designate.

Section 102(d)(3) directs the DCI to employ and utilize a professional staff to assist him in carrying out his Community-wide responsibilities. This staff would be part of the Office of the DCI. The staff could, in the DCI's discretion, operate as a unit, or be divided among the three new Assistant DCIs. The Committee anticipates that this staff would replace the functions of the current Community Management Staff and, while it should include some detailees from the Intelligence Community, it should consist primarily of a core professional staff. And increase of new personnel levels is neither warranted nor authorized with the exception of the three assistant DCIS.

*Section 705* also transfers the current section 102(a)(1), which establishes the Central Intelligence Agency, to a new section 102A of the National Security Act. Section 102A would reference Section 103(d), which sets forth the responsibilities of the Director of Central Intelligence as head of the CIA.

#### *Section 706*

*Section 706* would amend Section 103(b) of the National Security Act of 1947 to specifically authorize the National Intelligence Council (NIC) to enter into contracts with experts outside the intelligence Community to assist in the preparation of national intelligence estimates. Although the NIC has in recent years hired more individuals from outside the Intelligence Community to serve as National Intelligence Officers, it still has not, in the Committee's view, tapped sufficiently into the large reservoir of expertise on foreign policy issues that exists in the academic and business communities. The new authority would make clear that the NIC could contract for the services of such experts on a temporary basis. Section 103(b)(1)(B) currently directs the DCI, when prescribing security requirements for personnel appointed to the NIC from the private sector, to avoid unduly intrusive requirements. The Committee urges the DCI to consider ways to reduce the security requirements, such as eliminating or reducing the scope of the polygraph

requirement, for contract employees of the NIC who may have limited access to sensitive intelligence information and who may be discouraged by intrusive security measures.

In addition, Section 706 adds a new sentence to Section 103(b)(1)(A) to provide that the NIC be located in a place readily accessible to policymaking officials and persons who are not otherwise associated with the Intelligence Community. The Committee believes that locating the NIC outside the Central Intelligence Agency would help it to attract more outside experts, who might otherwise be leery of a more direct affiliation with CIA.

The foregoing changes were recommended by the Brown Commission. The Committee notes that the Brown Commission also recommended that the NIC be more fundamentally recast into a "National assessments Center" that would produce unclassified assessments based largely on open sources as well as classified estimates. The Committee is not persuaded that the preparation of unclassified assessments is a proper function for the Intelligence Community and is not prepared to endorse such a change at this time.

#### *Section 707*

*Section 707* of the bill would give the DCI increased authorities to manage the Intelligence Community. Despite his title of *Director* of Central Intelligence, the DCI, in the Committee's view, lacks sufficient authority to direct the activities of the various parts of the Intelligence Community in the most efficient and effective way.

*Section 707(a)(1)* would amend Section 103 of the National Security Act of 1947 to give the DCI the authority—in addition to his current authority to develop the annual budget for the National Foreign Intelligence Program—to concur in the development of the annual budget for the Joint Military Intelligence Program and to be consulted by the Secretary of Defense in the development of the budget for Tactical Intelligence and Related Activities.

*Section 707(a)(3)* gives the DCI authority to manage all of the national collection activities of the Intelligence Community. This would allow the DCI to ensure that collection resources are used in the most efficient and effective manner to meet intelligence requirements, rather than continuing to leave collection and acquisition decisions solely to individual program managers.

*Section 707(b)(1)* would provide that no funds could be reprogrammed within JMIP programs without DCI approval. The DCI currently has the authority to disapprove a reprogramming only with respect to NFIP elements. While the Committee believes that the DCI should have authority to approve JMIP reprogrammings as an extension of his authority to concur in the JMIP budget, the Committee recognizes that JMIP programs are administered by the Secretary of Defense. The Committee expects that the DCI will work cooperatively with the Secretary of Defense in exercising the DCI's authorities under this section.

*Section 707(b)(2)* would give the DCI authority to reprogram funds and transfer personnel among NFIP elements after consultation—in lieu of coordination, as required under existing law—with the head of the agency or department affected by the transfer. The

Committee believes that the current requirement for coordination has prevented the DCI from exercising his authorities effectively.

*Section 707(b)(3)* of the bill would give the DCI authority to allocate and expend all funds appropriated for national intelligence programs, projects, and activities that are managed by the directors of the National Security Agency, the National Reconnaissance Office, the Central Imagery Office, and the Central Intelligence Agency. Under current law, the DCI has budget execution authority only over funds appropriated for the CIA. Despite his responsibility for directing all NFIP elements, the DCI has lacked the “power of the purse” to ensure that his decisions stick. Giving the DCI budget execution authority over the principal national elements of the NFIP would significantly enhance the DCI’s authority to manage the Community.

*Section 707(c)* would give the DCI authority to rotate personnel among the national elements of the Intelligence Community and to consolidate personnel, administrative, and security programs to reduce overall costs, subject only to consultation (in lieu of the existing requirement for coordination) with affected department and agency heads.

#### *Section 708*

*Section 708* would amend Section 105 of the National Security Act of 1947 to give the DCI shared responsibility, with the Secretary of Defense, for the performance of certain NFIP functions, including the operation of effective organizations for the conduct of signals intelligence, imagery intelligence, and the procurement and operation of overhead reconnaissance systems.

Section 105 was added to the National Security Act in 1992 in order to set forth the responsibilities of the Secretary of Defense for elements of the NFIP. As currently written, Section 105 provides that the Secretary of Defense’s responsibilities are to be undertaken consistent with the responsibilities and authorities given to the DCI under Sections 103 and 104 of the National Security Act.

While recognizing that the National Security Agency, the Central Imagery Office, and the National Reconnaissance Office are line elements of the Department of Defense, the Committee believes that giving the Secretary of Defense sole responsibility for the operation of these organizations does not sufficiently recognize the responsibility of the DCI for the direction of the national intelligence functions of these organizations. Moreover, once the DCI has budget execution and reprogramming authority with respect to these national elements, it is difficult to continue to hold the Secretary of Defense solely responsible for ensuring they effectively fulfill their mission. Accordingly, Section 708 of the bill would provide that the Secretary of Defense and the DCI are jointly responsible for the performance of these functions. The Secretary of Defense would remain primarily responsible (consistent with the DCI’s responsibilities and authorities under Sections 103 and 104) for the operation of the Defense Intelligence Agency and military service intelligence units.

*Section 709*

*Section 709(a)* of the bill would add a new subsection (e) to Section 102 of the National Security Act of 1947 to establish the position of Assistant Director of Central Intelligence for Collection. This position would be appointed by the President and confirmed by the Senate.

The bill provides that if neither the DCI nor the DDCI is a commissioned officer in the Armed Forces, the ADCI for Collection shall be a commissioned officer in recognition of the fact that, except for the CIA, the major intelligence collection agencies are located within the Department of Defense.

The ADCI for Collection would be one of three new Assistant Directors of Central Intelligence who would assist the DCI in carrying out his Community-wide management responsibilities. The ADCI for Collection, in particular, would assist the DCI in carrying out his new responsibility, as added by Section 707 of this bill, to manage all Intelligence Community collection activities. In performing this function the ADCI for Collection would manage all national intelligence collection activities, including identifying targets where a particular intelligence discipline offers a comparative advantage and allocation resources accordingly. The ADCI for Collection would also provide guidance for, and would be required to concur in, the procurement and operation of national collection systems and assist the DCI in formulating plans and budgets for national collection activities.

*Section 709(b)* of the bill would provide for the consolidation of certain clandestine human-source collection activities currently conducted by the Defense HUMINT Service within the Department of Defense into the Directorate of Operations of the Central Intelligence Agency. This consolidation was recommended by the Brown Commission. The Commission found that, while military personnel are important to the successful collection of information from human sources about military topics, it is inefficient for the Department of Defense to maintain a large, separate infrastructure of military collectors who serve only a few years before returning to their regular career tracks.

*Section 709(b)* would require the DCI and the Secretary of Defense to enter into an agreement, no later than June 30, 1997, providing for the transfer of the clandestine collection elements of the Defense HUMINT Service to the CIA, which should be accomplished no later than June 30, 1998. CIA would be responsible for all clandestine intelligence collection from human sources, except those clandestine HUMINT activities undertaken by DoD elements in advance of, or as part of, a specific military operation. In collecting HUMINT on foreign military targets, CIA should, as needed, use military personnel on detail from DoD or the military services.

*Section 710*

*Section 710* would add a new subsection (f) to Section 102 of the National Security Act of 1947 to establish the position of Assistant Director of Central Intelligence for Analysis and Production. This position would be appointed by the President and confirmed by the Senate.



The ADCI for Analysis and Production would assist the DCI in overseeing analysis and production of intelligence by all elements of the Intelligence Community, establish priorities for analysis, and monitor the allocation of resources in order to eliminate unnecessary duplication in analysis and production.

Intelligence analysis and production of analytical products is broadly dispersed across the Intelligence Community. CIA, DIA, NSA, the State Department's Bureau of Intelligence & Research, and the intelligence units of the military services are all significant producers of intelligence analysis. Although some competitive analysis is necessary and some products are needed to serve purely departmental needs, the DCI currently lacks an effective mechanism to review intelligence analysis and production community-wide in order to ensure the most effective allocation of resources and to eliminate unnecessary duplication. Intelligence producers have worked together voluntarily to reduce overlaps, but the Committee believes that a better institutional structure is needed. The new ADCI for Analysis and Production would perform this function.

#### *Section 711*

*Section 711* would add a new subsection (g) to Section 102 of the National Security Act of 1947 to establish the position of Assistant Director of Central Intelligence for Administration. This position would be appointed by the President and confirmed by the Senate.

Numerous studies, including the Brown Commission, have urged greater consolidation of personnel and administrative functions and use of common standards across the Intelligence Community. The largest agencies, nevertheless, continue to maintain separate administrative, personnel, security, and training systems. The Brown Commission concluded "While the Commission is willing to accept that some latitude is needed for individual agencies to satisfy their unique requirements, we see no reason for all of these programs and activities to be administered separately, or, at least without greater uniformity." The Committee agrees with this conclusion.

The role of the proposed ADCI for Administration would be to assist the DCI in bringing about this uniformity. The ADCI for Administration would coordinate the various personnel management systems, information systems, telecommunications systems, finance and accounting services, and security programs for the Intelligence Community. The Committee expects that the ADCI for Administration would also assist the DCI in exercising his authorities under Section 104(f) of the National Security Act to consolidate personnel, administrative, and security programs of Intelligence Community elements.

#### *Section 712*

*Section 712* amends Section 5315 of Title 5, United States Code, to place the positions of Assistant Director of Central Intelligence for Collection, Assistant Director of Central Intelligence for Analysis and Production, Assistant Director of Central Intelligence for Administration, at Level IV of the Executive Schedule.

*Section 713*

This provision would establish the position of General Counsel of the Central Intelligence Agency to be appointed by the President and confirmed by the Senate. This provision is identical to Section 402 of this Committee's bill to authorize appropriations for fiscal year 1995. The provision was dropped from the Senate bill after opposition of the Administration. The Committee understands that the Administration no longer opposes the establishment of a statutory General Counsel for the CIA and, accordingly, has included the provision again in this year's bill.

The Committee believes that the confirmation process enhances accountability and strengthens the oversight process. It is also important to note that currently, all elements of the Intelligence Community—except the CIA—are part of departments that have statutory general counsels who are Senate confirmed. Requiring that the CIA's General Counsel be confirmed has been recommended several times over the years, including proposals by the Church Committee and the Iran-Contra Committee. The Senate's version of both the FY 1994 and FY 1995 Intelligence Authorization Bill also contained a provision requiring Senate confirmation of the CIA General Counsel.

Subsection 20(a) provides that the General Counsel be appointed by the President from civilian life and be confirmed by the Senate. The statutory CIA General Counsel would be subject to the authority and supervision of the DCI by virtue of the DCI's authority as head of the CIA under Sections 102A(a) and 103(d) of the National Security Act.

Subsection 20(b) establishes the General Counsel of the CIA as the chief legal officer of the CIA. As chief legal officer, the General Counsel will be responsible for ensuring that legal advice and assistance are provided as appropriate throughout the CIA, and all personnel providing legal services within the CIA will be bound by the legal opinions issued by the General Counsel in the course of the General Counsel's duties.

Subsection 20(c) provides that the DCI shall prescribe the functions of the statutory CIA General Counsel. Thus, the Director may assign the General Counsel functions beyond those inherent in the General Counsel as the CIA's chief legal officer. In particular, the DCI may assign to the statutory CIA General Counsel the function of providing legal advice to the DCI in the performance of the DCI's statutory functions that transcend the CIA.

*Section 714*

*Section 714* would add a new subsection (h) to Section 102 of the National Security Act of 1947 to establish an Office of Congressional Affairs of the Intelligence Community. The Office would coordinate the congressional affairs activities of the various elements of the Intelligence Community. It is not the Committee's intention that the Office direct the activities of other legislative affairs offices within the Intelligence Community; rather, the office would serve as a focal point for coordinating and responding to congressional requests that involve more than one department of agency.

Section 102(h)(2)(B) would permit the DCI to designate the Director of the office within the Central Intelligence Agency currently

known as the Office of Congressional Affairs to serve also as the Director of the Office of Congressional Affairs for the Intelligence Community. Section 102(h)(4) would provide that nothing in the provision is intended to preclude the individual offices of congressional affairs within elements of the Intelligence Community from responding directly to requests from the congressional committees.

#### *Section 715*

*Section 715* would add a new Section 105A to the National Security Act of 1947 that would specifically authorize intelligence agencies to collect information outside the United States about non-U.S. persons at the request of a law enforcement agency. This change was recommended by the Brown Commission.

CIA and NSA currently interpret their legal authorities as permitting them to engage in intelligence collection only for a “foreign intelligence” purpose. (NSA believes that the “primary” purpose of the collection must be to obtain foreign intelligence.) The Brown Commission concluded that the Intelligence Community may be taking to restrictive a view regarding whether intelligence assets can be tasked by law enforcement agencies to collect information overseas about non-U.S. persons. The law enforcement proviso of the National Security Act was intended to prohibit the CIA from infringing on the domestic jurisdiction of the FBI and from becoming a national secret police that might be directed against U.S. citizens. These concerns are not present when the Intelligence Community collects against foreign persons outside the U.S.

At the same time, the need to combat terrorism, drug trafficking and other transnational threats effectively requires that the capabilities of the Intelligence Community be harnessed to support law enforcement agencies as efficiently as possible.

Section 715 would clarify that CIA is not violating the law enforcement proviso if it collects intelligence overseas about non-U.S. persons at the request of a law enforcement agency and would also ensure that CIA, NSA, and other collection agencies apply the same standard when responding to law enforcement requests.

#### *Section 716*

*Section 716* would rewrite Section 106 of the National Security Act of 1947. Section 106(a) of the National Security Act, which was added in 1992, currently provides only that the DCI be consulted by the Secretary of Defense with respect to the appointments of the directors of the National Security Agency (NSA), the National Reconnaissance Office (NRO), and the Defense Intelligence Agency (DIA). Section 106(b) currently provides that the Director of the Central Imagery Office (CIO) shall be appointed by the Secretary of Defense “upon the recommendation” of the DCI.

As revised by Section 716 of the bill, Section 106(a) of the National Security Act would require the Secretary of Defense to obtain the *concurrence* of the DCI before appointing the directors of the NSA and NRO. (Section 802 of the bill separately requires the DCI to concur in the recommendation of the Secretary of Defense to the President to appoint the Director of the National Imagery and Mapping Agency (NIMA).) New section 106(b) would require that the DCI be *consulted* with respect to the appointments by the

relevant department or agency head of the heads of DIA, the State Department Bureau of Intelligence & Research (IN&R), the National Security Division of the FBI (NSD), and Office of Non-Proliferation and National Security (ON&NS). New section 106(c) would require the DCI to provide input to the annual evaluations of the directors of NSA, NRO, and NIMA by the Secretary of Defense.

The Brown Commission recommended, and the Committee agrees, that the DCI should have a stronger voice in the appointments of the directors of the NSA and the NRO as well as some voice in the appointments of the heads of DIA, IN&R, ON&NS/DoE, and NSD/FBI.

The Committee believes more involvement by the DCI in the appointment of the heads of NSA and NRO is desirable in light of the roles each of these individual plays in the collection of national intelligence. Similarly, while the heads of DIA, IN&R, and ON&NS manage activities that primarily support departmental requirements, their organizations play substantial roles in Intelligence Community activities.

The Committee notes that the Department of Justice and the Director of the FBI strongly object to requiring the Attorney General to consult with the DCI on the appointment of the head of the FBI National Security Division. In the Committee's view, consultation with the DCI is appropriate given that the National Security Division Director, while also responsible for domestic law enforcement functions, controls a significant part of the NFIP.

#### *Section 717*

*Section 717* would add a new Section 110 to the National Security Act of 1947 that would direct the Director of Central Intelligence to promulgate regulations to establish an Intelligence Community Senior Executive Service. This provision was recommended by the Brown Commission and serves the Committee's objective of establishing more uniform personnel policies. In addition, the new service borrows from the recent Defense reform legislation by requiring that career intelligence personnel serve in at least one assignment outside their home agency before being eligible for promotion into the Senior Executive Service.

The new Senior Executive Service would include personnel from the CIA, NSA, DIA, CIO, and NRO as well as certain civilian employees of the Department of Defense. Individuals who are currently a member of the Senior Executive Service of any of these agencies would automatically become members of the Intelligence Community Senior Executive Service.

The regulations issued by the DCI under this section would establish SES pay rates, performance appraisal standards, promotion guidelines, and standards for appointment to and removal from the SES.

The DCI would be permitted to detail or assign any member of the Intelligence Community SES to serve in a position outside the individual's parent organization, including elsewhere in the Intelligence Community, another government agency, or outside the Federal government.

The DCI would be required to consult with the Secretary of Defense when issuing the regulations under this section.

*Section 718*

*Section 718* would require the President, as part of his annual budget submission to Congress, to provide in unclassified form the total amount appropriated by Congress for all intelligence and intelligence-related activities during the current fiscal year and the total amount requested in the budget for the next fiscal year.

The Committee believes that public disclosure of the aggregate annual intelligence budget (including the budgets for the NFIP, JMIP, and TIARA) would allow the American people to know the amount that is being spent on intelligence as a proportion of all federal spending. The Committee believes that disclosure of the aggregate amount would not raise significant national security concerns. The Committee notes that a number of other major democratic governments, including the British, Australians and South Koreans, have in the last few years disclosed their aggregate intelligence budgets without adverse effect.

The Committee also notes that the bipartisan Brown Commission, which was tasked specifically by its statutory charter to consider the question, unanimously recommended disclosure of the total amount appropriated for intelligence activities for the current fiscal year and the total amount requested for the next fiscal year.

*Section 719*

*Section 719(a)* would delete the first sentence of Section 2(b) of Senate Resolution 400, which currently prohibits members of the Senate Intelligence Committee from serving continuously for more than eight years. This shall take effect with the commencement of the 105th Congress in January of 1997 and will in no way affect the Senate Majority and Minority Leader's appointment prerogative as it relates to the Committee. Section 2(b) was part of the original S. Res. 400, which established the Senate Intelligence Committee in 1976.

The SSCI is the only Senate committee with membership term limits, and it was the Committee's unanimous view that the SSCI's original charter relating to the length of tenure of its Members has proven unnecessary and even counterproductive to the Committee's oversight responsibilities. The Committee believes that limiting tenure on the SSCI limits Member experience and expertise, thereby detrimentally affecting the quality of oversight. The Committee notes that Senators with the most extensive service on committees have proved capable of the most far-reaching reforms—for instance in the Senate Armed Services Committee's work on the Goldwater-Nichols Defense Reorganization Act of 1986. As stated in the Brown Commission report, " \* \* \* because of the fixed tenure rule, Members often have to rotate off the [House and Senate intelligence oversight] committees at the very time they have begun to master the complex subject matter. Indeed, knowing their tenure is limited, some put their time in on other committees. As a consequence, in the view of many Commission witnesses, an unfortunate loss of expertise and continuity occurs, weakening the effectiveness of the committees."

The primary rationale for membership term limits on the Committee was the fear that Members would somehow be co-opted by the Intelligence Community. Yet at no point has the Committee faced a serious danger of co-optation. Indeed, SSCI Members are no more likely to be co-opted by the Intelligence Community than the Members of other authorizing Committees are likely to be co-opted by the Departments and agencies they oversee. In 1994, for example, the Committee issued a highly critical report of the CIA's handling of the Aldrich Ames espionage case—a report that was endorsed by all Committee Members representing a wide range of views about the Intelligence Community.

Requiring rotation of Members was also seen as a means to ensure that the SSCI could benefit from a flow of fresh ideas and alternative viewpoints of new Members. Since the SSCI was created 20 years ago, sixty-one Senators have served on the Committee and the average Member term of service on the Committee has been just over 5 years—and approximately 60 percent of Committee Members have served on the Committee less than 8 years (the current Committee term limit). This historical record underscores the fact that it is a virtual certainty that vacancies will continue to occur regularly on the SSCI, thus allowing for new faces and fresh ideas to enter. At the same time, however, Members who have a long-term interest in the area of intelligence can continue to serve and develop much-needed expertise.

Both the Brown Commission and the Council on Foreign Relations task force on the future of U.S. intelligence recommended ending Member term limits on the SSCI as a means of increasing Member expertise in intelligence oversight. In addition, former Directors of Central Intelligence Robert Gates and R. James Woolsey have advocated the termination of Committee term limits, as have SSCI hearing witnesses Harold Brown and former Committee Members Warren Rudman and Howard Baker.

While the Committee believes that the tenure of Members appointed to the Committee should not be constrained by term limits, the Committee does believe that it would be prudent to place limitations on the length of time that Members are allowed to serve in a Committee leadership capacity. The Committee notes that the Senate Republican Conference has recently established 6-year term limits for service as Chairman or Ranking Minority Member for any standing committee, effective in January 1997. Accordingly, the Committee imposed a 6-year term limit for both the SSCI Chairman and Vice Chairman.

#### *Section 720*

Section 720 of the bill would require the DCI to submit a report to Congress on the threats to the national information infrastructure from information warfare and other non-traditional attacks by foreign nations, groups, and entities. Government, including military, and private sector information and communications systems have become almost entirely reliant on commercial switching networks that are vulnerable to disruption. To date, identification of threats to these networks from foreign entities has not been a high priority for the Intelligence Community. The Committee believes it is important for the Intelligence Community to undertake a review

of the plans and capabilities of foreign countries and groups to engage in, and of the capabilities of the Intelligence Community to provide indications and warning of, such attacks.

*Title VIII—National Imagery and Mapping Agency*

*Section 801* defines the terms “imagery”, “imagery intelligence”, and “geospatial information”.

*Section 802* establishes the National Imagery and Mapping Agency.

The mission of the National Imagery and Mapping Agency will be to provide timely, relevant, and accurate imagery, imagery-related products, imagery intelligence and geospatial information to all of its customers within the U.S. Government in support of the national security objectives of the United States, with appropriate emphasis on support to the warfighter. The ability of all members of the Intelligence Community to obtain both imagery intelligence support regarding matters of common concern and support necessary for individual agency requirements will be maintained and expanded as appropriate.

The National Imagery and Mapping Agency is being created to accelerate the fusion of geospatial information and imagery intelligence to benefit a growing and diverse customer base, which will include non-Department of Defense customers and customers supporting military operations. One of the Agency’s key responsibilities will be to solicit and advocate the needs of those customers, and to act as focal point for their support. Creating a single agency, focused on the exploitation and dissemination of geospatial information and imagery intelligence to meet the needs of an expanding customer base, will increase the leverage on technology, research, and the expanding commercial imagery base to better serve both imagery and mapping customers. It will, acting on behalf of the Director of Central Intelligence, strengthen the management of imagery as an end-to-end process. It will also enhance the consistency of training, career development and career standards.

Under this section, the President would appoint the Director of the National Imagery and Mapping Agency. The Secretary of Defense would, with the Concurrence of the Director of Central Intelligence, recommend an individual to the President for such appointment. This section would also provide for a Deputy Director of NIMA. The Director and Deputy Director could be selected from civilian life or from among the commissioned officers, except that, as with the DCI and DDCI, at no time could both the Director and Deputy Director be commissioned officers. The Committee urges the DCI and Secretary of Defense to ensure the appropriate balance between Defense and non-Defense needs by choosing either the Director or the Deputy Director from the non-Defense Intelligence Community.

Section 121 would provide a clear, affirmative authorization for the Central Intelligence Agency to provide administrative and contracting services to the National Imagery and Mapping Agency (NIMA), to insure accomplishment of the national mission of the NIMA or the performance of intelligence community activities of common concern, notwithstanding provisions of law that would otherwise limit such an authorization. This section would permit the

Central Intelligence Agency to detail CIA employees to NIMA for indefinite periods of time.

It also would permit the Central Intelligence Agency to provide security police services for NIMA facilities, notwithstanding any limitations on jurisdiction of such personnel contained in section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C.A. § 403o). This authority is required to provide continuity of physical security support for CIA facilities being transferred to the NIMA.

*Section 803* makes this title effective on October 1, 1996 or the date of enactment of appropriations for the National Imagery and Mapping Agency for fiscal year 1997 whichever is later.

#### COMMITTEE ACTION

On April 24, 1996, the Select Committee on Intelligence approved the bill and ordered that it be favorably reported.

#### ESTIMATE OF COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee attempted to estimate the costs which would be incurred in carrying out the provisions of this bill in fiscal year 1997 and in each of the five years thereafter if these amounts are appropriated. For fiscal year 1997, the estimated costs incurred in carrying out the provisions of this bill are set forth in the classified annex to this bill. Estimates of the costs incurred in carrying out this bill in the five fiscal years thereafter are not available from the Executive branch, and therefore, the Committee deems it impractical, pursuant to paragraph 11(a)(3) of rule XXVI of the Standing Rules of the Senate, to include such estimates in this report.

#### EVALUATION OF REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXXVI of the Standing Rules of the Senate, the Committee finds no regulatory impact will be incurred by implementing the provisions of this legislation.

#### CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.