

AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 2002 FOR INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES OF THE UNITED STATES GOVERNMENT, THE COMMUNITY MANAGEMENT ACCOUNT OF THE DIRECTOR OF CENTRAL INTELLIGENCE, AND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM, AND FOR OTHER PURPOSES

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Mr. GRAHAM, from the Select Committee on Intelligence,
submitted the following

REPORT

[To accompany S. 1428]

The Select Committee on Intelligence (SSCI or Committee), having considered an original bill (S. 1428), to authorize appropriations for fiscal year 2002 for intelligence and intelligence-related activities of the United States Government, the Community Management Account of the Director of Central Intelligence, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, reports favorably thereon and recommends that the bill do pass.

CONTENTS

| | Page |
|--|------|
| Purpose of the Bill | 2 |
| Classified Supplement to the Committee Report | 3 |
| Scope of Committee Review | 3 |
| Committee Action on the Fiscal Year 2002 Intelligence Budget | 4 |
| Congress and the Intelligence Community | 5 |
| Presidential Determinations to Limit Access to Reporting of Covert Action | 5 |
| Effective Provision of Intelligence to, and Use by, Congress | 6 |
| Intelligence Community Personnel: | |
| Intelligence Community Education Program | 7 |
| CIA Inspector General Report on CIA Promotion Policy | 8 |
| Intelligence Collection, Analysis and Dissemination: | |
| Review of Legal Authorities to Conduct Computer Attack and Computer Intrusion Investigations | 8 |
| Counterterrorism | 9 |
| Counterdrug | 11 |
| Standardization of Foreign Names and Places in Intelligence Community Databases | 12 |

| | |
|---|----|
| Counterintelligence: | |
| Assessing the Possible Co-location of the National Infrastructure Protection Center and Office of the National Counterintelligence Executive | 12 |
| Department of Energy Compliance with Counterintelligence and Security Initiatives | 13 |
| Storage of Sensitive Compartmented Information | 13 |
| Director of Central Intelligence Guidelines for Initiation of Counterintelligence Damage Assessments | 14 |
| Assessment of Alternative Technologies to the Polygraph | 14 |
| Status of Implementation of Recommendations Contained in the "Final Report of the Attorney General's Review Team on the Handling of the Los Alamos National Laboratory Investigation" | 15 |
| Intelligence Community Financial Management, Planning, and Performance: Adoption of Baseline Accounting and Financial Statement Standards | 15 |
| Strategic Planning and Performance Goals and Measures for the Intelligence Community | 16 |
| Section-by-Section Analysis and Discussion | 17 |
| Committee Action | 20 |
| Estimate of Costs | 20 |
| Evaluation of Regulatory Impact | 21 |
| Changes in Existing Law | 21 |

PURPOSE OF THE BILL

This bill will:

- (1) Authorize appropriations for fiscal year 2002 for (a) U.S. intelligence activities and programs; (b) the Community Management Account of the Director of Central Intelligence; and (c) the Central Intelligence Agency Retirement and Disability System;
- (2) Authorize the personnel ceilings as of September 30, 2002, for intelligence activities of the U.S. Government 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) Permit judicial review under the Foreign Narcotics Kingpin Designation Act;
- (5) Modify the positions requiring consultation with the Director of Central Intelligence in appointments;
- (6) Modify reporting requirements for significant anticipated intelligence activities and significant intelligence failures;
- (7) Modify authorities for protection of Intelligence Community employees who report urgent concerns to Congress;
- (8) Require the Attorney General to review the protections against unauthorized disclosure of classified information and to submit a report to Congress;
- (9) Modify authorities relating to official immunity in interdiction of aircraft engaged in illicit drug trafficking;
- (10) Suspend the reorganization of the Diplomatic Telecommunications Program Office;
- (11) Require Presidential approval and submission to Congress of the National Counterintelligence Strategy and National Threat Identification and Prioritization Assessments;
- (12) Extend, for one year, the Central Intelligence Agency Voluntary Separation Act;
- (13) Provide permanent authority for the central services program.

CLASSIFIED SUPPLEMENT TO THE COMMITTEE REPORT

The classified nature of the 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 reference in the Act and has the same legal status as public law. The Classified Annex to this report explains the full scope and intent of the Committee's action as set forth in the classified Schedule of Authorizations. The Classified Annex has the status as any Senate Report and the Committee fully expects the Intelligence Community to comply with the limitations, guidelines, directions, and recommendations contained therein.

The 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 made available to the Committees on Appropriations of the Senate and the House of Representatives and to the President. The President shall provide for appropriate distribution within the Executive Branch.

SCOPE OF COMMITTEE REVIEW

The Senate Select Committee on Intelligence (SSCI for Committee) conducted a detailed review of the fiscal year 2002 budget requests for the National Foreign Intelligence Program (NFIP) of the Director of Central Intelligence; for 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 entailed a series of briefings and hearing with senior government 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. The Committee also monitored compliance with reporting requirements contained in statute. Each report was scrutinized by the Committee and appropriate action was taken, if necessary.

In accordance with a Memorandum of Agreement with the Senate Armed Services Committee (SASC), the SSCI is including its recommendations on both JMIP and TIARA in the Classified Annex. The SSCI has agreed that JMIP and TIARA issues will continue to be authorized in the defense authorization bill. The SASC has also agreed to involve the 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 a productive relationship with the SASC on all issues of mutual concern.

In addition to its annual review of the Administration's budget request, the Committee performs continuing oversight of various intelligence activities and programs. The Committee's Audit Staff conducts in-depth audits and reviews of specific programs and activities identified by the Committee as needing close scrutiny. The

Audit Staff also supports the Committee's continuing oversight of a number of administrative and operational issues. During the last year the Audit Staff evaluated the Central Intelligence Agency's efforts to increase its cadre of clandestine collectors of human source intelligence; examined the Intelligence Community's foreign materiel acquisition and exploitation programs; coordinated the Committee's ongoing review of the espionage activities and investigation of former Federal Bureau of Investigation employee Robert Hanssen; initiated an investigation of the Intelligence Community's actions in the case of Navy Lt. Commander Michael Speicher; and monitored the products and activities of the Intelligence Community's statutory and administrative Inspectors General. These kinds of inquiries frequently lead to Committee action with respect to the authorities, applicable laws, and budget of the activity or program concerned.

COMMITTEE ACTION ON THE FISCAL YEAR 2002 INTELLIGENCE BUDGET

Committee priorities—a five-year plan

The budget request submitted by the President includes a substantial increase for programs funded in the National Foreign Intelligence Program. The Committee believes this funding increase should represent the first installment of a five-year effort to correct serious deficiencies that have developed over the past decade in the Intelligence Community. As the Soviet Union dissolved and the threat from communism faded into history, our defense and intelligence budgets went into a period of steady decline through the mid-1990s. While the end of the Cold War warranted a reordering of national priorities, the continued decline in funding has left us with a diminished ability to address the emerging threats and technological challenges of the 21st Century.

We are at a point where continuing global instability and uncertainty forces us to refocus our attention on the importance of our intelligence apparatus. Transnational threats such as international terrorism, global crime syndicates, international drug trafficking, and the proliferation of weapons of mass destruction and their delivery systems pose significant risk to this nation's interests. Yet these threats cannot be defeated solely with traditional military force. Our Intelligence Community is our first line of defense.

In this budget, the Committee seeks to highlight four priority areas that must receive significant attention in the near term if intelligence is to fulfill its role in our national security strategy. Those are: (1) revitalizing the National Security Agency; (2) correcting deficiencies in human intelligence; (3) addressing the imbalance between intelligence collection and analysis; and (4) rebuilding a robust research and development program. This budget lays out a five-year plan for addressing each of these areas.

The Committee's top priority last year was the revitalization of the National Security Agency (NSA). This continues to be the Committee's number one concern. Five years from now the NSA must have the ability to collect and exploit electronic signals in a vastly different communications environment. Along with significant investment in technology, this means closer collaboration with clandestine human collectors. The computer and telecommunications systems that NSA employees use to accomplish their work must be

state-of-the-art technology. Analysts must have sophisticated software tools to allow them to exploit fully the amount of data available in the future. The Committee is encouraged that the Administration also has made this a priority and requested significantly more resources for the NSA in the fiscal year 2002 budget.

The five-year plan for correcting deficiencies in human intelligence should enable this critical component of the Intelligence Community to meet the increasingly complex and growing set of collection requirements. The Central Intelligence Agency (CIA) will need to hire case officers capable of dealing with the explosion of technology, both as collection tools and as potential threats. These individuals must be able to operate effectively in the many places around the world where U.S. interests are threatened. To do that, the CIA must place even greater emphasis on the diversity of the new recruits. Finally, the human intelligence system must be integrated more closely with our other collection agencies.

As we do a better job of collecting intelligence, we also must enhance our ability to understand this information. The percentage of the intelligence budget devoted to analysis and processing has been declining steadily since 1990. While collection systems are becoming more and more capable, our investment in analysis continued to decline. The disparity threatens to overwhelm our ability to analyze and use the information collected. To address this problem, the Committee has added funds to finance promising all-source analysis initiatives across the Community. The amount authorized is a down payment on a five-year spending profile to rebuild the Community's all-source analytical capability.

The Committee's final priority, a strong research and development program, supports all of the other initiatives. Over the past decade, agencies have allowed research and development accounts to be the "bill payer" for funding shortfalls, and have sacrificed modernization and innovation in the process. The Committee has outlined a plan to reverse the Intelligence Community's declining investment in advanced research and development. The Classified Annex also includes a requirement for a review of several emerging technologies to determine what will provide the best long-term return on investment. The Committee continues to support and encourage a symbiotic relationship between the Intelligence Community and the private sector using innovative approaches such as the Central Intelligence Agency's In-Q-Tel.

CONGRESS AND THE INTELLIGENCE COMMUNITY

Presidential determinations to limit access to reporting of covert actions

The Committee is concerned with Executive Branch compliance in some cases with the requirement in the National Security Act of 1947 (50 U.S.C. 401 et seq.) to provide the intelligence committees with written notice of Presidential covert action findings.

Section 503 of the National Security Act (50 U.S.C. 413b) describes the process by which the President authorizes the conduct of covert actions by departments, agencies or entities of the United States Government. Under this provision, the President may authorize a covert action if "the President determines such an action is necessary to support identifiable foreign policy objectives of the

United States and is important to the national security of the United States, which determination shall be set forth in a finding * * * [and] [e]ach finding shall be in writing. * * *” Section 503 (a)(1) and (c)(1) set forth special circumstances in which the President is given the authority either to delay the written notification for 48 hours in an emergency situation, or to limit the access to the written finding in extraordinary circumstances to only eight members of Congress—the leadership of the House and Senate and the leadership of the intelligence committees. In neither of those special circumstances, however, is the President relieved of his statutory responsibility to provide a copy of the finding in writing. Section 503(c)(3) and (4) state clearly that whenever prior notice of a covert action is not given to Congress, or access is limited, the written finding shall state the reasons justifying those special circumstances.

The Committee believes that the provision of written copies of the President’s findings is essential to effective congressional oversight of covert action programs. In cases in which access has been limited to the leadership of the Senate and House of Representatives and the leadership of the intelligence committees—and denied, because of the extreme sensitivity of the program, to the other members of the intelligence committees who are charged with oversight of the activities of the Intelligence Community—section 503(c)(4) requires that the President provide to the Chairmen of the intelligence committees a copy of the finding, including the reasons for the limited access. Copies of these limited access findings, kept in accordance with accepted security practices in the Sensitive Compartmented Information facilities of the intelligence committees, will thus be available for further study and discussion among the few members who have been granted authorized access. This will allow proper oversight, as contemplated by the statute, of these important programs that the President has determined “affect the vital interests of the United States.”

The common practice of the Executive Branch, however, has been only to provide oral briefings on these sensitive programs, many of which present complicated factual and policy issues. The Committee expects this practice to be rectified to conform with the National Security Act requirement for the provision of a written finding to the Chairmen of the intelligence committees, including the specific reasons for the limitations on access.

The Committee is confident that the security directors of the intelligence committees, in cooperation with security officials of the Executive Branch, will be able to develop procedures that will satisfy Executive Branch concerns about the security of, and limited access to, these sensitive covert action documents.

Effective provision of intelligence to, and use by, Congress

Congress, primarily through the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, conducts oversight of the Intelligence Community and authorizes funds for intelligence activities by the agencies within the community. In furtherance of these two goals, the members and staffs of the intelligence committees are given access to a wide array of intelligence products, including finished intelligence. However, less attention has been paid to another important role of Con-

gress—its role as a consumer of intelligence to inform its decision-making on policy. This role is recognized both in the National Security Act of 1947 and in presidential executive order. Despite this recognition, there has been little effort to develop mechanisms to ensure that members of Congress receive intelligence, in a form tailored to their unique needs, to enable them to perform their policy-making responsibilities efficiently and effectively.

Accordingly, the Committee directs the Director of Central Intelligence to prepare a comprehensive report which, at a minimum, sets forth: (1) a description of existing mechanisms established pursuant to Section 103(a)(1)(D) of the National Security Act of 1947 (50 U.S.C. 403-3(a)(1)(D)) and Section 1.5(s) of Executive Order 12333 to ensure that Congress is appropriately served in its policy-making role as an intelligence consumer; and (2) a recommendation for changes in such mechanisms, if needed. In preparing such report, the Director of Central Intelligence should consider the appropriateness of adopting some or all of the mechanisms, procedures and methodology currently used to ensure effective intelligence support to the Executive Branch.

INTELLIGENCE COMMUNITY PERSONNEL

Intelligence Community Education Program

In order to develop and maintain robust intelligence capabilities, the Intelligence Community must hire and retain employees with advanced scientific and technical skills. The Committee notes that one of the challenges facing the Intelligence Community is the competition from the private sector for individuals with advanced science and technology degrees. While the Intelligence Community is often unable to match the financial incentives provided by the private sector, the challenge and excitement of intelligence work often enables agencies to retain technical experts once they have worked in the Community and have contributed to solving Intelligence Community technology problems. The period of time required to obtain security clearances, however, can sometimes cause a debilitating delay during which applicants accept private sector positions.

While this challenge affects many elements of the Intelligence Community, the Committee is most concerned with agencies such as the National Security Agency (NSA) that are heavily dependent upon individuals with technical training. The Committee has included funds for a pilot program at the NSA to provide educational opportunities to recent graduates who are waiting for the security clearance process to be completed. Details of this program are included in the Classified Annex accompanying this bill.

The Deputy Director of Central Intelligence for Community Management is directed to monitor the implementation of this program by the NSA and to determine the efficacy of the program and the advisability of expanding the program to other agencies. The Director of Central Intelligence shall make a recommendation to the Committee on the possible expansion of this program as part of the fiscal year 2004 budget request.

CIA Inspector General Report on CIA Promotion Policy

The Central Intelligence Agency (CIA) must recruit and train a new generation of intelligence officers to complement, and ultimately replace, the intelligence officers nearing the end of their careers. The Committee places a high priority on the recruitment and retention of highly qualified personnel to staff the CIA and other components of the Intelligence Community. While the Committee is persuaded that the CIA is recruiting an impressive group of new officers, the Committee is less certain about the Agency's retention of experienced, senior intelligence officers. The Committee believes that an important factor contributing to attrition among the senior ranks is dissatisfaction with the promotion policies within various Agency directorates. Accordingly, the Committee directs the CIA Inspector General to conduct an inspection of the CIA's promotion policy of all Agency employees to, and within, the Senior Intelligence Service from 1995 to the present, and to provide a written report to the intelligence oversight committees by March 1, 2002.

The inspection should cover promotions within all Agency directorates and should include, but not be limited to, an examination of factors such as: professional accomplishments, length of service, time spent in the field versus time spent at Headquarters, use of accelerated promotions, counterintelligence experience, out-of-directorate experience, interagency experience, level of education and training, management experience, age, sex, race, composition and effectiveness of peer review panels, and the extent to which promotion candidates have recourse to a clearly-defined appeal process. The Inspector General also shall make specific recommendations on how CIA management can improve the Agency's promotion policy to ensure that it is fair, equitable, and consistently-applied—both within each directorate and from one directorate to another—and that the policy rewards CIA employees with demonstrated record of achievement and expertise.

INTELLIGENCE COLLECTION, ANALYSIS AND DISSEMINATION

Review of legal authorities to conduct computer attack and computer intrusion investigations

Over the past few years, a number of computer attack and intrusion cases have tested the capabilities of U.S. government agencies and private sector entities to investigate these incidents, identify those responsible, and prevent similar efforts in the future.

The Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), and other government agencies all play some role in computer attack and intrusion investigations. Because identifying those responsible for computer attacks and intrusions is difficult, and hackers can easily transcend traditional national boundaries, the government entities involved in these investigations have encountered numerous problems in determining their own and one another's legal authorities and responsibilities in computer investigations. In the past, these problems have been resolved through ad hoc interpretations of statute and regulation, cumbersome coordination, and over-cautious division of labor among the agencies. The time and effort spent resolving these issues detracts from the overall goal of investigating the computer attack and intrusion itself.

The Committee believes that these issues should be resolved. Accordingly, the Committee directs the Attorney General, the Director of the FBI, the Director of Central Intelligence, and the Secretary of Defense to complete a review by March 1, 2002 of the legal authorities and responsibilities of the government entities customarily involved in investigations of computer attacks and intrusions which threaten national security interests. Additionally, the review should indicate whether legislative changes are necessary to improve the U.S. Government's capability to investigate computer hacking, while respecting the rights of United States persons. The review should also provide an assessment of the budget implications, if any, of the recommendations. Finally, this review should include a detailed plan on how to inform and train employees of each relevant government entity on the legal authorities and restrictions relevant to each agency's involvement in such investigations.

Counterterrorism

The Committee notes that recent assessments of U.S. terrorism and structures for countering terrorism point to the need for increased attention to the Intelligence Community response to the problem of terrorism. The National Commission on Terrorism ("Bremer Commission") focused specifically on terrorism, while the U.S. Commission on National Security/21st Century set terrorism within a larger context of redefining concepts of national security. The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction focused on domestic, catastrophic attacks, and acknowledged the blurred lines between domestic and international terrorism.

All three reports recognize the fundamental importance of intelligence in any strategy to combat and respond to terrorism. But all three reports also make clear that any effort to improve the government-wide approach to the terrorism problem must take into account every facet of the issue—detection, prevention, consequence management, crisis management, and law enforcement, diplomatic and military responses. A counterterrorism intelligence program must be designed within this larger context. Further, in addition to enhancement of the central coordinating authority for terrorism policy, we also must have a centralized authority for managing the intelligence component of that policy. The Director of Central Intelligence needs to perform that role for the United States Government.

Oversight of the intelligence component of the U.S. response to terrorism is the responsibility of this Committee and is among its highest priorities. The Committee believes a number of issues are of particular importance, and they are noted below.

The Relationship Between Intelligence and Law Enforcement: The relationship between law enforcement and intelligence that has developed, largely on an ad hoc basis over the last decade, is better than it ever has been. However, the Committee believes that a statutory framework may be necessary to institutionalize and rationalize the relationships among the agencies. Many observers have noted that while law enforcement is, theoretically, only one of a set of "tools" to respond to terrorism, it has often taken a pre-eminent, and sometimes exclusive, role. The Bremer Commission

recognized this, highlighting the “pros and cons of the law enforcement approach” in its treatment of the Pan Am 103 prosecution efforts. One of the other tools is intelligence, and it is important to create a framework within which these issues can be addressed.

Sharing of Information Among Government Agencies: Effective sharing of information between and among the various components of the government-wide effort to combat terrorism is also essential, and is presently hindered by cultural, bureaucratic, resource, training and, in some cases, legal obstacles. The Bremer Commission noted that “[t]he law enforcement community is neither fully exploiting the growing amount of information it collects during the course of terrorism investigations nor distributing that information effectively to analysis and policymakers.”

The Committee commends the Intelligence Community for aggressive, effective and creative intelligence efforts against the terrorism target. But there is room for improvement. The Committee remains concerned that, in the commendable rush to engage against the imminent threat associated with international terrorism, the Intelligence Community has adopted a crisis mentality. Ad hoc approaches to coordination and interaction among the agencies created during crisis situations become the norm after the crisis is over. International terrorism is not, however, in the view of the Committee, a “crisis,” with its connotation of a short-lived phenomenon. International terrorism is a “condition” with which we will have to deal on a long-term basis. The Committee strongly encourages the Intelligence Community to orient itself accordingly by implementing policies—under the control of the Director of Central Intelligence—for regulating the various roles of the elements of the Intelligence Community that participate in the fight against terrorism.

Financial Intelligence Related to International Terrorism: The Committee believes that intelligence related to the finances of foreign terrorist organizations can play a valuable role in efforts to combat international terrorism. Such intelligence can allow for a better understanding of the form, structure and capabilities of individual terrorist groups, and the relationships within and among such organizations. Such intelligence can also contribute to active efforts to disrupt terrorist organizations, including, but not limited to, law enforcement and regulatory mechanisms.

The Committee endorses, in principle efforts to develop elements within the Intelligence Community designed to exploit effectively financial intelligence. One effort within the Department of Treasury’s Office of Foreign Assets Control, is the “Foreign Terrorist Asset Tracking Center” (FTATC), which shows promise as a vehicle to address this need. However, the Committee is concerned that FTATC, to extent it will function as an element of the Intelligence Community, has not been coordinated adequately with the Director of Central Intelligence nor reviewed by this Committee.

Accordingly, the Committee directs the Director of Central Intelligence and the Secretary of Treasury to prepare jointly a report assessing the feasibility and advisability of establishing an element of the federal government to provide for effective and efficient analysis and dissemination of foreign intelligence related to the financial capabilities and resources of international terrorist organizations. The report should include an assessment of the FTATC as

a vehicle for addressing such a need and, if appropriate, a plan for its continued development.

National Virtual Translation Center: The Committee is concerned that intelligence in general, and intelligence related to terrorism in particular, is increasingly reliant on the ability of the Intelligence Community to quickly, accurately and efficiently translate information in a large number of languages. Many of the languages for which translation capabilities are limited within the United States Government are the languages that are of critical importance in our counterterrorism efforts. The Committee believes that this problem can be alleviated by applying cutting-edge, internet-like technology to create a "National Virtual Translation Center". Such a center would link secure locations maintained by the Intelligence Community throughout the country and would apply digital technology to network, store, retrieve, and catalogue the audio and textual information. Foreign intelligence could be collected technically in one location, translated in a second location, and provided to an Intelligence Community analyst in a third location.

The Committee notes that the CIA, FBI NSA and other intelligence agencies have applied new technology to this problem. The Committee believes that these efforts should be coordinated so that the solution can be applied on a Community-wide basis. Accordingly, the Committee directs the Director of Central Intelligence, in consultation with the Director of the FBI, and other heads of departments and agencies within the Intelligence Community, to prepare and submit to the intelligence committees by June 1, 2002, a report concerning the feasibility and structure of a National Virtual Translation Center, including recommendations regarding the establishment of such a center and the funding necessary to do so.

Counterdrug

On April 20, 2001, a Peruvian air force fighter plane mistakenly shot down an American missionary plane. Two American citizens, Veronica Bowers and her infant daughter Charity, were killed and the American pilot of the missionary plane, Kevin Donaldson, was seriously injured. The Peruvian military plane involved in this incident was operating in conjunction with a CIA surveillance plane as part of a wider U.S.-Peru "air bridge denial" program designed to prevent drug traffickers from utilizing air transport routes to move cocaine from Peru to Colombia.

The U.S. Government began assisting the Government of Peru in air interdiction efforts in the early 1990s. Legislation enacted in October 1994 required the President to make a determination that safeguards were in place in Peru to prevent the shoot-down of planes not involved in narcotics trafficking. President Clinton made that determination in December 1994. The legislation requiring presidential approval did not provide for additional periodic reviews of the safeguards.

In the aftermath of this tragic event, the Committee conducted a review of U.S. Government involvement in the air bridge denial program. Committee staff conducted interviews with executives and personnel from the CIA, the Department of State, the Department of Defense, the Customs Service, the Drug Enforcement Administration, the Office of National Drug Control Policy, the Peruvian Air Force, Peru's aeronautical agency, and the Association of

Baptists for World Evangelism missionary organization. The Committee intends to issue a report containing the findings and conclusions of the review. Among its findings, the Committee found that annual reviews of safeguards and procedures should be conducted if the U.S. Government is involved in an air interdiction program that includes the use of lethal force against suspected drug trafficking aircraft. Accordingly, the Committee included in the Senate Intelligence Authorization Bill for fiscal year 2002 a provision requiring annual presidential certification and report to Congress concerning such programs.

Standardization of foreign names and places in Intelligence Community databases

Section 309 of the Intelligence Authorization Act for fiscal year 1998 (Public Law 105-107; 111 Stat. 2248; 50 U.S.C. 403-3 note) directed the Director of Central Intelligence to “carry out a survey of current standards for the spelling of foreign names and places, and the use of geographic coordinates for such places, among the elements of the intelligence community.” Section 309 also required a report of the findings of the survey be provided to Congress, and the issuance of guidelines to the Intelligence Community to “ensure the use of uniform spelling of foreign names and places and the uniform use of geographic coordinates for such places.” The report accompanying that statute noted the Committee finding that “[i]ntelligence databases maintained by various entities within the intelligence community are a critical national resource * * * [t]he Intelligence Community must standardize the names and places in each database to allow for effective and consistent support for war fighters and national security policy makers.”

The Committee reaffirms its belief that intelligence databases are vital to the efforts of the Intelligence Community, and thus is concerned that the directives contained in the 1998 law have not been fulfilled. No formal report has been issued and it appears that little work has been done on this effort in the nearly four years since the Congress enacted the provision requiring such action.

Accordingly, the Director of Central Intelligence is directed to comply, on an immediate basis, with the directives contained in Section 309 of the Intelligence Authorization Act for Fiscal Year 1998.

COUNTERINTELLIGENCE

Assessing the possible co-location of the National Infrastructure Protection Center and Office of the National Counterintelligence Executive

The FBI’s National Infrastructure Protection Center (NIPC) is charged with detecting, preventing and responding to cyber and physical attacks on U.S. critical infrastructures and with overseeing computer crime investigations conducted by FBI field offices. The Committee believes that there is sufficient similarity in the mission and interagency focus of both the NIPC and the Office of the National Counterintelligence Executive to warrant consideration of co-locating the two offices at one site. Accordingly, the Committee directs that no later than March 1, 2002, the National Counterintelligence Executive, the Director of Central Intelligence,

and the Director of the FBI jointly provide to the intelligence oversight committees a written assessment of the desirability and feasibility (including a budgetary assessment) of co-locating the NIPC and the Office of the National Counterintelligence Executive at one site, separate and apart from CIA, FBI and Department of Defense facilities.

Department of Energy compliance with counterintelligence and security initiatives

A General Accounting Office assessment of the status of the Department of Energy's compliance with counterintelligence and security initiatives announced by the President or Secretary of Energy indicates that a number of these eighty-eight initiatives have not been completed. The Committee directs the Secretary of Energy to provide a written report to the intelligence oversight committees, and other appropriate committees, by February 1, 2002, regarding the status of implementation of all outstanding counterintelligence and security initiatives at the Department of Energy (as well as the National Laboratories), including the time frame for implementation, the reason(s) for lack of implementation to date, and a detailed accounting of the additional resources, if any, needed to complete implementation of the initiatives.

Storage of Sensitive Compartmented Information

Last year, Congress directed the Director of Central Intelligence to certify whether each element of the State Department that handles, retains or stores information that is classified as Sensitive Compartmented Information complies with all applicable Director of Central Intelligence Directives (DCIDs) and all applicable Executive Orders relating to the handling, retention, or storage of such information. This action was taken in response to a series of serious lapses and counterintelligence failures at the Department of State.

During the past year, the Director of Central Intelligence has worked closely with the State Department's Bureau of Intelligence and Research (INR) and Bureau of Diplomatic Security (DS) to reduce the number of facilities used to discuss and store Sensitive Compartmented Information and to ensure that the remaining facilities meet applicable regulations. Although this process continues, the Committee believes the actions taken by the Director of Central Intelligence, INR and DS have improved the security posture at the State Department. Nevertheless, further periodic review of security practices and procedures at the State Department and other Intelligence Community agencies is necessary to ensure intelligence sources and methods are adequately protected.

In June 2001, the Director of Central Intelligence directed that the Senior Officials of the Intelligence Community conduct a self-inspection of the policies and procedures in place for their organizations to protect Sensitive Compartmented Information facilities and information, and to report the results of the inspections to the Director of Central Intelligence by September 2001. The Director of Central Intelligence directed that these self-inspection reports shall address the following areas: physical security, technical security, personnel security, information systems security, visitor access controls, document control, document handling/storage and security

awareness training. The Director of Central Intelligence is directed to provide a written report to the intelligence oversight committees by February 1, 2002, summarizing the results of these inspections, how the Director of Central Intelligence plans to address any non-compliance with applicable DCIDs and Executive Orders, and how this will be addressed in the context of the fiscal year 2003 budget submission.

Director of Central Intelligence guidelines for initiation of counter-intelligence damage assessments.

The Committee is concerned about the timeliness with which counterintelligence incidents (including espionage cases) have been referred by the Director of Central Intelligence to the Office of the National Counterintelligence Executive, and its predecessor, to conduct a damage assessment. Accordingly, the Director of Central Intelligence is directed to provide to the intelligence oversight committees, by February 1, 2002, has written guidelines for determining what counterintelligence incidents warrant a damage assessment and time frame for referring such matters to the Office of the National Counterintelligence Executive.

One element of this issue is related to concerns that a formal damage assessment conducted during the pendency of a criminal investigation or prosecution could complicate or harm the investigation or prosecution. It would, of course, be the Committee's preference that counterintelligence damage assessments, including and especially in espionage cases, be commenced and completed as soon as possible. At the same time, the Committee does not want to require any action that could unduly complicate or harm ongoing criminal investigations or prosecutions. Accordingly, the Committee requests that the Attorney General submit a report, by February 1, 2002, setting forth the following: (1) an assessment of current law concerning the potential effect of conducting counterintelligence damage assessments during the pendency of a criminal investigation or prosecution; and (2) if such assessment reveals that current law prohibits, discourages, or delays conducting counterintelligence damage assessments during the pendency of a criminal investigation or prosecution, the recommendations of the Attorney General on specific legislation which could eliminate or ameliorate these impediments.

Assessment of alternative technologies to the polygraph

The FBI, the CIA and the Department of Defense are directed to conduct jointly an assessment of the accuracy, reliability and desirability of the TruthScan technology (developed by Dr. Michael Tansey), particularly for counterintelligence purposes, as an investigative tool to supplement the use of the polygraph. The report should be provided to the appropriate oversight committees of the Congress no later than March 1, 2002. The report should include an assessment of other alternative technologies to the polygraph which have been examined by the FBI, the CIA or the Department of Defense and the prospects for their use as investigative tools.

*Status of implementation of recommendations contained in the
“Final Report of the Attorney General’s Review Team on the
Handling of the Los Alamos National Laboratory Investigation”*

The Committee directs the Attorney General, with the cooperation of the Director of the FBI, to provide a written report to the appropriate committees of Congress, by February 1, 2002, regarding the status of implementation of the recommendations contained in the “Final Report of the Attorney General’s Review Team on the Handling of the Los Alamos National Laboratory Investigation,” including the time frame for implementation, the reason(s) for lack of implementation, if any, to date, and a detailed accounting of the additional resources, if any, needed to complete implementation of the recommendations.

INTELLIGENCE COMMUNITY FINANCIAL MANAGEMENT, PLANNING AND
PERFORMANCE

Adoption of baseline accounting and financial statement standards

In January 1997, a report was provided by the President on Executive Branch Oversight of the Intelligence Community Budget. The report states that Department of Defense elements carrying out programs and activities of the National Foreign Intelligence Program are subject to the requirements imposed by law on other elements and components of the DoD. Additionally, the National Security Agency (NSA), the Defense Intelligence Agency (DIA), and the National Reconnaissance Office (NRO) were directed to prepare classified financial statements beginning with the reporting of fiscal year 1997 financial information required by law.

Since 1997, the financial statements and management practices of the NRO have received more scrutiny than those of any other DoD entity. The Inspectors General of the DoD, CIA, and NRO have independently or jointly conducted audits of various aspects of the NRO’s financial management systems since the mid-1990s. Additionally, an independent public accounting firm completed an audit of the NRO’s fiscal year 2000 financial statements in February 2001. To date, however, only fiscal year 1998 financial data of the NSA and DIA have been audited by the DoD Inspector General, and only on a limited basis.

The recent independent audit of the NRO’s fiscal year 2000 financial statements revealed significant shortcomings in its financial management practices. Despite the problems noted, the audit does afford an opportunity for the NRO’s senior management to rectify identified deficiencies. The Committee is concerned that similar shortcomings may exist within other National Foreign Intelligence Program agencies which have not received the same level of financial management oversight. This includes the National Imagery and Mapping Agency (NIMA), and CIA, two agencies not discussed in the January 1997 report.

The Committee directs the Director of Central Intelligence, in consultation with the Secretary of Defense, to direct the appropriate statutory Inspector General to perform an audit of the form and content of the fiscal year 2001 financial statements of the DIA, NSA, NIMA, and CIA, and report the findings of the audits to the intelligence committees by April 1, 2002. The principal purpose of these audits will be to determine if agencies are preparing their fi-

financial statements in a manner consistent with Federal financial accounting standards and appropriate Office of Management and Budget (OMB) guidance. The audits also will specify any improvements that each agency must make to their financial management systems to enable future comprehensive audits of their financial statements. Thereafter, as necessary, each of these agencies is directed to submit an annual report to the intelligence committees no later than April 1 each year specifying improvements underway to ensure that the financial statements created with fiscal year 2004 data can be audited consistent with current law and OMB requirements.

The Committee further directs the Director of Central Intelligence, in consultation with the Secretary of Defense, to ensure that all agencies in the DoD–NFIP aggregation, including the CIA, receive an audit of their financial statements by March 1, 2005. In addition to other items, the audits will assess the adequacy of internal controls over resource information management systems and facilities. The result of the audits must be reported to the intelligence committees no later than April 1 of the appropriate year. The audits are to be performed by a statutory Inspector General or a qualified Independent Public Accountant, at the discretion and under the direction of the appropriate Inspector General.

Finally, to ensure that sufficient resources are available for these audits, the Committee directs the Community Management Staff, in coordination with the appropriate Inspectors General, to provide a report by May 1, 2002, to the intelligence committees specifying the level of resources that will be required and how each agency will incorporate them into its long-range budget to allow for completion of a full financial statement audit by the spring of 2005. The report also will include a proposed schedule for completion of the audits, informed by the results of the form and content audits of the agencies' current financial statements as previously described.

Strategic planning and performance goals and measures for the Intelligence Community

The Committee believes that the Intelligence Community is handicapped by the lack of comprehensive strategic and performance plans that can be used to articulate program goals, measure program performance, improve program efficiency and aid in resource planning. In the absence of such plans, the Committee feels that it is challenging for both the Executive and Legislative Branches to assess the effectiveness of individual intelligence agencies and programs, and the Intelligence Community as a whole, against Administration-stated goals and objectives. It is particularly important to ensure that resources are used as efficiently and effectively as possible during periods of limited budgets and rapid technological change. The Committee commends the Director of Central Intelligence for issuing his Strategic Intent in March 1999, but the inherent limits of the document, especially in terms of defining and measuring the Intelligence Community's performance, requires the production of updated plans and new metrics.

The Committee directs the Director of Central Intelligence to produce a comprehensive Intelligence Community strategic plan and performance plan, as well as complementary strategic and per-

formance plans for the intelligence agencies within the National Foreign Intelligence Program aggregation. The Committee anticipates that the results of the current strategic Intelligence Community review will inform the final strategic and performance plans. The Committee anticipates that final plans will be classified, consistent with appropriate executive orders, to protect intelligence information.

The Committee directs that, within 60 days after the enactment of this Act, the intelligence committees be briefed regarding the DCI's progress in completing the strategic and performance plans. The briefing also will afford the Intelligence Community with the opportunity to solicit and consider the views and suggestions of Congress. The Committee further directs that the strategic and performance plans for fiscal year 2003 be completed and delivered to the intelligence authorization committees by March 1, 2002. Thereafter, an updated and revised strategic plan should be submitted at least once every four years, and performance plans should be updated and submitted annually to the intelligence committees by March 1 of each year.

In addition, the Committee directs the Director of Central Intelligence to submit a report to the intelligence committees detailing the fiscal year 2003 program performance of the overall Intelligence Community and individual National Foreign Intelligence Programs by March 1, 2004. Thereafter, annual reports on program performance for the previous fiscal year should be submitted to the intelligence committees by March 1 of each year.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

TITLE I—INTELLIGENCE ACTIVITIES

Section 101. Authorization of appropriations

Section 101 lists departments, agencies, and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for fiscal year 2002.

Section 102. Classified schedule of authorizations

Section 102 states that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings for the entities listed in section 101 for fiscal year 2002 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103. Personnel ceiling adjustments

Section 103 authorizes the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, in fiscal year 2002 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 intelligence oversight committees of the Congress.

Section 104. Community Management Account

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

Subsection (a) authorizes appropriations for fiscal year 2002 for the staffing and administration of various components under the CMA. Subsection (a) also authorizes funds identified for the advanced research and development committee to remain available for two years.

Subsection (b) authorizes full-time personnel for elements within the CMA for fiscal year 2002 and provides that such personnel may be permanent employees of the CMA element or detailed from other elements of the United States Government.

Subsection (c) expressly authorizes the classified portion of the CMA.

Subsection (d) requires that personnel be detailed on a reimbursable basis, with certain exceptions.

Subsection (e) authorizes appropriations in the amount authorized for the CMA under subsection (a) to be made available for the National Drug Intelligence Center (NDIC). Subsection (e) requires the Director of Central Intelligence to transfer the appropriations to the Department of Justice to be used for NDIC activities under the authority of the Attorney General, and subject to Section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403-3(d)(1)).

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT
AND DISABILITY SYSTEM

Section 201. Authorization of appropriations

Section 201 authorizes appropriations for fiscal year 2002 for the Central Intelligence Agency Retirement and Disability Fund.

TITLE III—GENERAL PROVISIONS

Section 301. Increase in employee compensation and benefits authorized by law

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

Section 302. Restriction on conduct of intelligence activities

Section 302 provides that the authorization of appropriations by the Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

Section 303. Judicial review under the Foreign Narcotics Kingpin Designation Act

Section 303 amends the Foreign Narcotics Kingpin Designation Act (title VIII of Public Law 106-120; 113 Stat. 1629; 21 U.S.C. 1904). This provision eliminates the restriction on judicial review of determinations made under that Act, and is in accord with rec-

ommendations made by the Judicial Review Commission on Foreign Asset Control.

Section 304. Modification of positions requiring consultation with Director of Central Intelligence in appointments

Section 304 removes the position of Director of the Office of Non-proliferation and National Security of the Department of Energy from those positions for which the Secretary of Energy is required to consult with the Director of Central Intelligence, and adds to the list of positions the Director of the Office of Intelligence of the Department of Energy and the Director of the Office of Counterintelligence of the Department of Energy. This provision brings the law into accord with the positions that exist currently at the Department of Energy.

Section 305. Modification of reporting requirements for significant anticipated intelligence activities and significant intelligence failures

Section 305 amends the National Security Act of 1947 to require that notifications to Congress of intelligence activities and intelligence failures be made in writing and contain a concise statement of facts pertinent to the report and an explanation of the significance of the intelligence activity or failure covered by the report. This section also requires the Director of Central Intelligence to establish standards and procedures applicable to such reports. This section is designed to bring clarity and uniformity to an essential element of congressional oversight of the Intelligence Community. While not intended to increase or change reporting requirements, it is designed to ensure that reports made pursuant to the National Security Act are properly memorialized and consistent in form and content. The Committee notes that this provision is not intended to discourage prompt oral notifications, but requires that they be followed immediately by a written report fulfilling the requirements of this section.

Section 306. Modification of authorities for protection of Intelligence Community employees who report urgent concerns to Congress

Section 306 alters the process applied to the handling of complaints or information brought to the attention of the Central Intelligence Agency Inspector General and other Inspectors General of the Intelligence Community, by requiring that in all such cases the complaint or information be forwarded to the Director of the Central Intelligence, or other agency head, and then to the intelligence committees. Prior to this amendment, only complaints that the Inspectors General found “credible” were forwarded to the agency head and onward to the intelligence committees. Section 306 requires the agency heads and the intelligence committees also to receive copies of those complaints that an Inspector General “does not find credible.”

Section 307. Review of protections against the unauthorized disclosure of classified information

Section 307 requires the Attorney General, in conjunction with the Director of Central Intelligence and the heads of other appropriate agencies, to conduct a comprehensive review of current laws,

regulations and protections against unauthorized disclosure of classified information and to submit a report to Congress in unclassified form.

Section 308. Modification of authorities relating to official immunity in interdiction of aircraft engaged in illicit drug trafficking

Section 308 amends current law (22 U.S.C. 2291–4) relating to official immunity for employees and agents of the United States and foreign countries engaged in the interdiction of aircraft used in illicit drug trafficking. Under Section 308, the President must make an annual certification to Congress concerning both the existence of a drug threat in the country at issue and the existence in that country of appropriate procedures to protect against innocent loss of life. An annual report to Congress by the President concerning United States Government assistance to such interdiction programs is also required by Section 308.

Section 309. Suspension of reorganization of Diplomatic Telecommunications Service Program Office

Section 309 suspends until October 1, 2002 the effective date of the provisions in the Intelligence Authorization Act for fiscal year 2001 that require reorganization of the Diplomatic Telecommunications Service Program Office.

Section 310. Presidential approval and submission to Congress of National Counterintelligence Strategy and National Threat Identification and Prioritization Assessments

In December 2000, President Clinton signed Presidential Decision Directive 75 outlining specific steps that will enable the U.S. Counterintelligence Community to fulfill better its mission of identifying, understanding, prioritizing and counteracting the intelligence threats faced by the United States. Section 310 requires that the President approve and submit to Congress the National Counterintelligence Strategy and each National Threat Identification and Prioritization Assessment, or any modifications thereof, produced pursuant to Presidential Decision Directive 75.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

Section 401. One-year extension of Central Intelligence Agency Voluntary Separation Pay Act.

Section 401 extends the Central Intelligence Agency Voluntary Separation Pay Act for one year, to September 30, 2003.

Section 402. Modification of Central Services Program

Section 402 eliminates the termination date for the Central Intelligence Agency Central Services Program.

COMMITTEE ACTION

On September 6, 2001, the Select Committee on Intelligence approved the bill and ordered that it be favorably reported.

ESTIMATE OF COSTS

Pursuant to paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the estimated costs incurred in carrying out the pro-

visions of this bill for fiscal year 2002 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. On September 11, 2001, the Committee transmitted this bill to the Congressional Budget Office and requested that it conduct an estimate of the costs incurred in carrying out the provisions of this bill.

EVALUATION OF REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that 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 paragraph 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

