

of America and the Republic of Chile on Social Security, which consists of two separate instruments: a principal agreement and an administrative arrangement. The Agreement was signed at Santiago on February 16, 2000.

The United States-Chilean Agreement is similar in objective to the social security agreements already in force between the United States and Austria, Belgium, Canada, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to eliminate dual social security coverage and taxation, and to help prevent the loss of benefit protection that can occur when workers divide their careers between two countries. The United States-Chilean Agreement contains all provisions mandated by section 233 and other provisions that I deem appropriate to carry out the purposes of section 233, pursuant to section 233(c)(4) of the Act.

I also transmit for the information of the Congress a report prepared by the Social Security Administration explaining the key points of the Agreement, along with a paragraph-by-paragraph explanation of the provisions of the principal agreement and the related administrative arrangement. Annexed to this report is the report required by section 233(e)(1) of the Social Security Act, a report on the effect of the Agreement on income and expenditures of the U.S. Social Security program and the number of individuals affected by the Agreement. The Department of State and the Social Security Administration have recommended the Agreement and related documents to me.

WILLIAM J. CLINTON,  
THE WHITE HOUSE, May 22, 2000.

#### INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2001

The SPEAKER pro tempore. Pursuant to House Resolution 506 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4392.

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#### IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4392) to authorize appropriations for fiscal year 2001 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, with Mr. THORNBERRY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Friday, May 19, 2000, all time for general debate had expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule by title, and each title shall be considered read.

No amendment to that amendment shall be in order except those printed in the portion of the CONGRESSIONAL RECORD designated for that purpose and pro forma amendments for the purpose of debate. Amendments printed in the RECORD may be offered only by the Member who caused it to be printed or his designee and shall be considered read.

The Chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment and may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in any series of questions shall not be less than 15 minutes.

The Clerk will designate section 1.

The text of section 1 is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 2001”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations.

Sec. 102. Classified schedule of authorizations.

Sec. 103. Personnel ceiling adjustments.

Sec. 104. Intelligence community management account.

Sec. 105. Transfer authority of the Director of Central Intelligence.

#### TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

#### TITLE III—GENERAL PROVISIONS

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

Sec. 302. Restriction on conduct of intelligence activities.

Sec. 303. Sense of the Congress on intelligence community contracting.

Sec. 304. Authorization for travel on any common carrier for certain intelligence collection personnel.

Sec. 305. Reports on acquisition of technology relating to weapons of mass destruction and advanced conventional munitions.

#### TITLE IV—CENTRAL INTELLIGENCE AGENCY

Sec. 401. Modifications to Central Intelligence Agency’s central services program.

Sec. 402. Technical corrections.

#### TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

Sec. 501. Three-year extension of authority to engage in commercial activities as security for intelligence collection activities.

Sec. 502. Contracting authority for the National Reconnaissance Office.

The CHAIRMAN. Are there any amendments to section 1?

If not, the Clerk will designate title I. The text of title I is as follows:

#### TITLE I—INTELLIGENCE ACTIVITIES

#### SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2001 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.

(2) The Department of Defense.

(3) The Defense Intelligence Agency.

(4) The National Security Agency.

(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

(6) The Department of State.

(7) The Department of the Treasury.

(8) The Department of Energy.

(9) The Federal Bureau of Investigation.

(10) The National Reconnaissance Office.

(11) The National Imagery and Mapping Agency.

#### SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2001, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the bill H.R. 4392 of the One Hundred Sixth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

#### SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2001 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed two percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever the Director exercises the authority granted by this section.

#### SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of Central Intelligence for fiscal

year 2001 the sum of \$144,231,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for the Advanced Research and Development Committee shall remain available until September 30, 2002.

(b) **AUTHORIZED PERSONNEL LEVELS.**—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 356 full-time personnel as of September 30, 2001. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) **CLASSIFIED AUTHORIZATIONS.**—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2001 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts shall remain available until September 30, 2002.

(2) **AUTHORIZATION OF PERSONNEL.**—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2001, there are hereby authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) **REIMBURSEMENT.**—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2001, any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a non-reimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) **NATIONAL DRUG INTELLIGENCE CENTER.**—

(1) **IN GENERAL.**—Of the amount authorized to be appropriated in subsection (a), \$28,000,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, test, and evaluation purposes shall remain available until September 30, 2002, and funds provided for procurement purposes shall remain available until September 30, 2003.

(2) **TRANSFER OF FUNDS.**—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) **LIMITATION.**—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403-3(d)(1)).

(4) **AUTHORITY.**—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

**SEC. 105. TRANSFER AUTHORITY OF THE DIRECTOR OF CENTRAL INTELLIGENCE.**

(a) **LIMITATION ON DELEGATION OF AUTHORITY OF DEPARTMENTS TO OBJECT TO TRANSFERS.**—Section 104(d)(2) of the National Security Act of 1947 (50 U.S.C. 403-4(d)(2)) is amended—

(1) by inserting “(A)” after “(2)”;

(2) by redesignating subparagraphs (A), (B), (C), (D), and (E) as clauses (i), (ii), (iii), (iv), and (v), respectively;

(3) in clause (v), as so redesignated, by striking “the Secretary or head” and inserting “subject to subparagraph (B), the Secretary or head”; and

(4) by adding at the end the following new subparagraph:

“(B)(i) Except as provided in clause (ii), the authority to object to a transfer under subparagraph (A)(v) may not be delegated by the Secretary or head of the department involved.

“(ii) With respect to the Department of Defense, the authority to object to such a transfer may be delegated by the Secretary of Defense, but only to the Deputy Secretary of Defense.

“(iii) An objection to a transfer under subparagraph (A)(v) shall have no effect unless submitted to the Director of Central Intelligence in writing.”.

(b) **LIMITATION ON DELEGATION OF DUTIES OF DIRECTOR OF CENTRAL INTELLIGENCE.**—Section 104(d)(1) of such Act (50 U.S.C. 403-4(d)(1)) is amended—

(1) by inserting “(A)” after “(1)”;

(2) by adding at the end the following new subparagraph:

“(B) The Director may only delegate any duty or authority given the Director under this subsection to the Deputy Director of Central Intelligence for Community Management.”.

Mr. GOSS. Mr. Chairman, I ask unanimous consent that the remainder of the bill be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The text of the remainder of the bill is as follows:

**TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM**

**SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2001 the sum of \$216,000,000.

**TITLE III—GENERAL PROVISIONS**

**SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.**

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

**SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.**

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

**SEC. 303. SENSE OF THE CONGRESS ON INTELLIGENCE COMMUNITY CONTRACTING.**

It is the sense of the Congress that the Director of Central Intelligence should continue to direct that elements of the intelligence community, whenever compatible with the national security interests of the United States and consistent with operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, should competitively award contracts in a manner that maximizes the procurement of products properly designated as having been made in the United States.

**SEC. 304. AUTHORIZATION FOR TRAVEL ON ANY COMMON CARRIER FOR CERTAIN INTELLIGENCE COLLECTION PERSONNEL.**

(a) **IN GENERAL.**—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amend-

ed by adding at the end the following new section:

**“TRAVEL ON ANY COMMON CARRIER FOR CERTAIN INTELLIGENCE COLLECTION PERSONNEL**

“SEC. 116. (a) **IN GENERAL.**—Notwithstanding any other provision of law, the Director of Central Intelligence may authorize travel on any common carrier that, in the discretion of the Director, would by its use maintain or enhance the protection of sources or methods of intelligence collection or maintain or enhance the security of personnel of the intelligence community carrying out intelligence collection activities.

“(b) **AUTHORIZED DELEGATION OF DUTY.**—The Director may only delegate the authority granted by this section to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency the Director may delegate such authority to the Deputy Director for Operations.”.

(b) **CLERICAL AMENDMENT.**—The table of contents for the National Security Act of 1947 is amended by inserting after the item relating to section 115 the following new item:

“Sec. 116. Travel on any common carrier for certain intelligence collection personnel.”.

**SEC. 305. REPORTS ON ACQUISITION OF TECHNOLOGY RELATING TO WEAPONS OF MASS DESTRUCTION AND ADVANCED CONVENTIONAL MUNITIONS.**

Section 721(a) of the Intelligence Authorization Act for Fiscal Year 1997 (50 U.S.C. 2366) (Public Law 104-293, 110 Stat. 3474) is amended—

(1) by striking “Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter,” and inserting “Not later than March 1, 2001, and every March 1 thereafter,”; and

(2) in paragraph (1), by striking “6 months” and inserting “year”.

**TITLE IV—CENTRAL INTELLIGENCE AGENCY**

**SEC. 401. MODIFICATIONS TO CENTRAL INTELLIGENCE AGENCY'S CENTRAL SERVICES PROGRAM.**

Section 21(c)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(c)(2)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (G); and

(2) by inserting after subparagraph (E) the following new subparagraph:

“(F) Receipts from miscellaneous reimbursements from individuals and receipts from the rental of property and equipment to employees and detailees.”.

**SEC. 402. TECHNICAL CORRECTIONS.**

(a) **REPORTING REQUIREMENT.**—Section 17(d)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(1)) is amended—

(1) by adding “and” at the end of subparagraph (D);

(2) by striking subparagraph (E); and

(3) by redesignating subparagraph (F) as subparagraph (E).

(b) **TERMINOLOGY WITH RESPECT TO GOVERNMENT AGENCIES.**—Section 17(e)(8) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(e)(8)) is amended by striking “Federal” each place it appears and inserting “Government”.

**TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

**SEC. 501. THREE-YEAR EXTENSION OF AUTHORITY TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLECTION ACTIVITIES.**

Section 431(a) of title 10, United States Code, is amended by striking “December 31, 2000” and inserting “December 31, 2003”.

**SEC. 502. CONTRACTING AUTHORITY FOR THE NATIONAL RECONNAISSANCE OFFICE.**

(a) *IN GENERAL.*—The National Reconnaissance Office (“NRO”) shall negotiate, write, and manage vehicle acquisition or launch contracts that affect or bind the NRO and to which the United States is a party.

(b) *EFFECTIVE DATE.*—This section shall apply to any contract for NRO vehicle acquisition or launch, as described in subsection (a), that is negotiated, written, or executed after the date of the enactment of this Act.

(c) *RETROACTIVITY.*—This section shall not apply to any contracts, as described in subsection (a), in effect as of the date of the enactment of this Act.

AMENDMENT NO. 1 OFFERED BY MR. ROEMER

Mr. ROEMER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. ROEMER.

At the end of title III add the following new section (and conform the table of contents accordingly):

**SEC. 306. ANNUAL STATEMENT OF THE TOTAL AMOUNT OF INTELLIGENCE EXPENDITURES FOR THE PRECEDING FISCAL YEAR.**

Section 14 of the National Security Act of 1947 (50 U.S.C. 404i) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

“(c) ANNUAL STATEMENT OF THE TOTAL AMOUNT OF INTELLIGENCE EXPENDITURES FOR THE PRECEDING FISCAL YEAR.—Not later than February 1 of each year, the Director of Central Intelligence shall submit to Congress a report containing an unclassified statement of the aggregate appropriations for the fiscal year immediately preceding the current year for National Foreign Intelligence Program (NFIP), Tactical and Intelligence and Related Activities (TIARA), and Joint Military Intelligence Program (JMIP) activities, including activities carried out under the budget of the Department of Defense to collect, analyze, produce, disseminate, or support the collection of intelligence.”

Mr. ROEMER. Mr. Chairman, I look forward to the debate on this particular issue.

First of all, I want to reiterate to the gentleman from Florida (Mr. GOSS) and the gentleman from California (Mr. DIXON) that I rise in strong support and bipartisan support of this bill overall. I do, however, bring up one consideration as amendment on this bill, and that is we do not want to reveal agency operations, we do not want to reveal any individual agency budgets, and we do not want to reveal spending on any kind of specific programs.

Given those parameters, what this amendment argues is for one ray of sunshine, one simple disclosure of the aggregate funding of all intelligence activities for fiscal year 1999. Not this year's request, not this year's budget, but 1999's budget.

We do that in light of the fact, and I stress to my colleagues, that the intelligence community has voluntarily disclosed the 1998 and the 1997 budgets, so we are simply saying that this one ray

of sunlight comes down for the taxpayer to have some kind of sense of what the overall budget is for our intelligence community.

Now, this amendment is cosponsored by my good friend the gentleman from Virginia (Mr. MORAN), it is cosponsored by my friend the gentleman from Oregon (Mr. BLUMENAUER), it is cosponsored by my friend the gentleman from Washington (Mr. SMITH), and, I think most importantly, it is supported by my ranking member, who I have the deepest respect for, the gentleman from California (Mr. DIXON).

The organizations that are for this ray of sunshine, for a little bit of accountability in disclosure, the organizations that have written us letters on this, include the Taxpayers for Common Sense, Citizens Against Government Waste, the Council for a Livable World, the Center for Defense Information, the Center for International Policy, and the list goes on and on.

But I think one of the most compelling, one of the most compelling reasons to do this, Mr. Chairman, is a report that came out in 1996 by people who go over these individual budget levels throughout the intelligence community, line-by-line, program by program, SAP by SAP, special access program by special access program, and they have analyzed this. And they are such people as the former Defense Secretaries, Mr. Brown and Mr. Aspin. They recommended that we disclose not just the current year, but the next year's budget. This was in the Aspin-Brown report in 1996. So they asked for a few rays of sunshine on this report, when all I am simply asking for is one on the 1999 budget funding level.

I think this is common sense, I think this will help us get a little bit more accountability with the intelligence community. I think this informs the taxpayer of an overall budget, what might be going on in terms of our intelligence operations. And I think one of the most really convincing arguments for this, Mr. Chairman, is that we have right here the Intelligence Authorization Act for Fiscal Year 2001. And in this we have listed, which is a public document, Mr. Chairman, this is an unclassified document, they go through here and list Rivet Joint Mission Trainer, \$15.5 million plus-up; the Manned Reconnaissance Systems, \$8 million plus-up; the F-18 Shared Airborne Reconnaissance Pod, \$18 million plus-up; and on down, over page after page after page, a public document.

We are not even asking for that. We already disclose that in this report. We are asking for the aggregate level, not broken down by agency, for 1999. Not individual reports, not individual line items, like we do in the Defense Department budget, like we did last week, item by item, of helicopters and ships and personnel and operations and maintenance in our Defense budget. We

are not calling for any of that in this budget; simply for an aggregate level.

Finally, Mr. Chairman, let me say that there are books out there that talk in explicit and sensitive detail about some of our very sensitive operations.

The CHAIRMAN. The time of the gentleman from Indiana (Mr. ROEMER) has expired.

(By unanimous consent, Mr. ROEMER was allowed to proceed for 1 additional minute.)

Mr. ROEMER. Mr. Chairman, there are books out there that you can pick up on the best seller list. I am not confirming, I am not denying what they say and what accuracy they have in a book written by Tom Clancy, or a book written called Blind Man's Bluff on submarines. But certainly some of these books that are written by former CIA people or are written by journalists and reporters, that talk in intimate detail about some of these programs, I do not support the release of that kind of information. But we are simply saying, Mr. Chairman, one ray of sunshine for disclosure, for public accountability and for information for the taxpayer, so that they have one grain of information to look at as they assess what our priorities should be with the intelligence budget as it relates to the overall budget.

Mr. SISISKY. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Indiana (Mr. ROEMER).

Mr. Chairman, I regret really having to oppose this amendment offered by my three very good friends and colleagues, but I do not believe it makes sense to force, and the word is “force,” the executive branch to declassify the aggregate amount appropriated for intelligence activities each year. If there is one item of information a country should not disclose to its adversaries, it is the amount of effort being made each year to discover those adversaries' plans and intentions, their secrets and vulnerabilities.

Much of the business of intelligence is expensive, especially when it comes to our government's amazing technical activities. Yet those capabilities can sometimes be defeated by comparatively simple countermeasures. If our adversaries can track the ups and downs of our intelligence budget over time, they may be able to figure out when new capabilities are coming on line and develop techniques to make the system less capable. We should keep our intelligence budget secret so we do not provide information to our adversaries about what we are working on and when.

Furthermore, I do not believe disclosure of the aggregate appropriations amount will improve the debates on intelligence in this body. Every Member of the House of Representatives may have access to this information, and

considerably more, by taking advantage of the opportunity to read the classified schedule incorporated in the intelligence authorization bill each year. Disclosure of the appropriations total will not provide more information about intelligence activities to Members of the House and Senate than is now available.

Since disclosure of the aggregate intelligence budget will not provide more information to Members of Congress but could assist those who seek advantages over the United States of America, I urge the defeat of this amendment.

Mr. MORAN of Virginia. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, the sponsors of this amendment are not being subversive, and I do not think we are being naive. I think we are being responsible to the taxpayers, to the extent that it is responsible.

Now, I would certainly agree with my good friend who just spoke that we ought not disclose any kind of information that would jeopardize our ability to protect American citizens. But this does not do that.

When my good friend, the gentleman from Indiana (Mr. ROEMER), said he was offering the amendment and would I like to be a cosponsor, I said, "Of course. Why not?" That is still my reaction. Of course, we will not disclose the cumulative amount. Why not? It is not an astronomical amount; it is a very reasonable portion of the Federal budget. In fact, when you compare it to anyone that might be considered a potential threat, it is a very minimal amount to protect this country.

But we have a responsibility to the taxpayers. It is their money; it is not ours. It is one thing not to give the taxpayers a receipt or an accounting of how we might spend the money; it is quite another to ask for a blank check. Just sign the bottom line, we will fill in the amount.

I do not think that is the way we do things, that we ought to do things in a democracy. We ought to have as much transparency as possible. We ought to do everything that we can to restore trust in government. This is not a totalitarian society. I could see it if we were operating under a fascist or certainly a communist system. You would never imagine disclosing these kinds of amounts. But we have nothing to hide. We have very responsible members of the Committee on Appropriations on both sides of the aisle, and certainly the Senate Select Committee on Intelligence, and the gentleman from California (Mr. DIXON) is an extraordinarily responsible leader on our side, and the gentleman from Florida (Mr. GOSS) as well.

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Now, the gentleman from California (Mr. DIXON) is supporting, but so is

Warren Rudman, a former Senator, certainly not a subversive, certainly not someone that does anything in a radical kind of manner. General Harold Brown; we have the former CIA director Turner; we have any number of people that looked at this and decided this is not an irresponsible thing to do. In fact, this is a responsible thing to do in light of the requirement that we have to be responsive to the American taxpayer.

So I would suggest, Mr. Chairman, that this amendment ought to be included, and it probably ought to be included as a matter of course in each successive year. It is nice that the CIA or our intelligence agencies chose to disclose the amount in 1997 and 1998, and probably will be disclosed this year; but I think we ought to say as well that the legislative branch recognizes that this is an appropriate thing to do in light of the fact that it is not our money, it is the taxpayers' money.

It was a recommendation, as the gentleman from Indiana (Mr. ROEMER) said, of the commission that was put together to look at these types of national security issues. They came up with a recommendation that the amount be disclosed to the public, the overall amount for the intelligence budget on a current basis. This is not on a current basis, this is the previous fiscal year. I think it is a very moderate piece of legislation, it is a reasonable thing to do, and I would hope that we would not have much controversy over something like this and deal with more difficult, complex matters.

Mrs. WILSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, there is something that I think we are forgetting in this debate and that is that every Member of Congress can go up to the Select Committee on Intelligence room and see the entire content of the intelligence authorization bill. There is nothing that is kept from us as elected representatives, but there are things that are kept in every detail from our opponents and our potential enemies.

That puts the responsibility on a small number of shoulders, and most of them are sitting in this room here now, the members of the House Permanent Select Committee on Intelligence. It is our job to review the budgets and the sources and the methods and to provide oversight of all of the intelligence agencies, and we have to do this job in a way that is kind of uncommon for politicians. We have to do it quietly, without a lot of public hooaha, in a closed room where the press is not there. Most of us are used to putting out press releases on everything and arguing about things in the media, but we do not have that privilege on this committee, and we should not, because this is a matter of national security.

Declassifying the intelligence budget, whether as an overall number, or in

smaller pieces, only helps our enemies to track trends in our spending and figure out what we are doing. My colleague from Indiana talks about books that have been published or articles that have been written, and none of us on this committee ever confirm or deny or say anything about what is right and what is wrong; and he well knows that a lot of it is complete wildness. But we do not comment on it, because it is our job not to.

The problem with declassifying the whole number is that one cannot talk about the details, so it makes no sense in context with other parts of the budget. We cannot explain it, we cannot defend it, we cannot talk about the details and what it means and what we are buying; but we can refer our colleagues up to the intelligence room to look at those details, even though we cannot talk about it publicly. Even the gentleman from Virginia (Mr. MORAN) seemed to find it difficult to talk about comparisons here on the floor because this is a public forum. We would have that difficulty again and again and again if we try to justify a declassified total number without being able to talk about the specifics that make it up.

I am also concerned that there are no exceptions in this amendment for time of war or national emergencies, and we are directing the President and the CIA to declassify numbers that, frankly, they already have the authority to do without direction of this Congress; and it concerns me when, as elected representatives, we tell the executive branch to declassify things and get prescriptive about how exactly that should be done. It is my view that that generally should be left up to the executive branch of government.

Sometimes I think that we get a little bit complacent. The Cold War is over. We are all focused on things at home, on Social Security and taxes and education, and things that our constituents are facing every day. But just because the Cold War is over does not mean that there are not people out there that would take advantage of the United States and whose interests are contrary to our own, and I am ever mindful of what Churchill once said. The truth must be protected by a bodyguard of lies, and it is sometimes in the interests of the United States of America to deceive our enemies about what we are actually doing in order to protect our national security.

My colleague from Indiana talks about one ray of sunshine. I see it a little differently. I think it is one piece of a puzzle, a piece of a puzzle that our enemies would very much like to have, and which I think is the obligation of this body to deny them.

Mr. ROEMER. Mr. Chairman, will the gentlewoman yield?

Mrs. WILSON. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, I thank the gentlewoman, who is a very valuable member of the Committee on Intelligence, and I certainly respect her opinions on a host of different issues.

However, as she started out the debate on this issue, she said, we as members of the committee have access, the 16 of us, and all 435 members, have access if they want. This amendment is not about that access of Members of Congress. Sometimes we think we are pretty smart; we think we know and have a lot of the answers. This is about providing one simple piece of information to the people that work hard every day to fund the overall budget, and then they get one ray of sunshine to know how the intelligence budget fits into the overall budget.

The CHAIRMAN. The time of the gentlewoman from New Mexico (Mrs. WILSON) has expired.

(By unanimous consent, Mrs. WILSON was allowed to proceed for 1 additional minute.)

Mrs. WILSON. Mr. Chairman, that really was not my point. My point was that there are times when we as elected representatives have to take on and shoulder tremendous responsibility, and that responsibility may include access to information that we cannot share with our constituents. That is the responsibility we have been given as members of this committee, and it is one that I think that we should continue, including this one piece of information.

Mr. BLUMENAUER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the point, as my colleague from Indiana was making, was what the public has a right to know. The fiscal year 1997 budget was revealed to the American public as \$26.6 billion. That was not something that was probably a shock to our adversaries, who have pretty good estimates of what we are doing in this arena. There are experts that speculate on this. The Republic's foundations have not been shattered. The next year when it was revealed that it was \$26.7 billion, life went on, and if we were to give the American public what the figure is for this year and what is recommended in the aggregate for the following year, life as we know it will continue.

I think that we in this body and in the Federal Government generally tend to draw a curtain of secrecy over things that are not going to be secret from our adversaries; but they are going to keep, and this happens time and time again, information that we do not want revealed to the American public for whatever reason.

We are starting to see the history of what has happened with the FBI under J. Edgar Hoover under the guise of national security. We have seen the things that have been perpetrated by that agency under Mr. Hoover's regime.

Mr. Chairman, I think that it is time for us to take a step back and look at this amendment, which gives the American public an opportunity to evaluate some of the trending. It is not going to be a great mystery to our adversaries who have access to some information from their sources. It is speculated upon in the academic community, but it will give the American public a little more information.

I think it is appropriate for us to ask hard questions as a people about the resources that are being invested. How, given the tens of billions of dollars that were invested in our security apparatus, we could not predict the collapse of the former Soviet Union; that we somehow could not identify the Chinese embassy, which resulted in a tragic bombing, the impact of the repercussions we are still dealing with.

Mr. Chairman, I think that we ought to be honest about the public realm and stop the charade here. There is an adequate amount of information that is available for very sophisticated people to be able to allow some tracking of this. I think taking an additional step so that the American public has it makes sense. I hope that we will be more rational about what we keep secret and what we do not. I am all in favor of trying to protect things that are truly important for national security, but not to protect people from embarrassment about things years after the fact, and not to protect the American public from knowing how their tax dollars were spent.

Rumor has it that in about 1987 we had a peak of about \$36 billion that were invested in all of these intelligence activities. Yet, today, 13 years later, with a less sophisticated array of allied forces that we are contending with, we are still investing huge sums of money that ought to give us all an opportunity for a constructive national debate.

I think the approval of this amendment, with the recommendations of the commission that we had of other informed sources who want to pull this out into the light of day, as my friend, the gentleman from Indiana (Mr. ROEMER) has indicated, would be an important step forward.

Mr. Chairman, I hope that we as a body will be consistent in terms of wanting to make sure that the public has access to all of the positions that they have a right to have knowledge of and that does not compromise our security. We can start by at least going back and giving a third year's subject for what the total disclosure is.

Mr. Chairman, I urge the adoption of this amendment.

Ms. PELOSI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the gentleman's amendment, and I thank him for his courage and his leadership

in offering it here. He is a very serious member of the committee, as has been noted, and all of us on the committee take our responsibilities very seriously.

When a Member of the House receives the honor of serving on the House Permanent Select Committee on Intelligence, we assume a greater responsibility for our national security in that we have to be trusted with a great deal of information. We also take a responsibility to protect the sources and methods by which we obtain that information. That responsibility is a grave one for us, because lives are at stake.

We also want our President and the administration to have the best possible information in the interest of our national security and to make the decisions and judgments that a President must make, regardless of what party he belongs to, or what opinions he has. We want him to have the best possible information.

So we need to have, and again, as we are in a new world where it is not bipolar, but it is many serpents, as DCI Woolsey described it at one time, we need to have intelligence, but we ought to be careful enough to move in that direction with fiscal responsibility as well as responsibility for intelligence.

□ 1915

We are a very special country. The confidence that people have in our government is our strength. So it is hard to understand why, in this body, the House of the people, we would want to deprive the public of knowing what proportion of our budget is spent on intelligence.

I happen to think that we are good enough at that, that the intelligence community is good enough at releasing that figure and at the same time having our adversaries not have access to what that figure is spent on or what any increase in spending would be spent on.

I am certain that our intelligence community can meet that challenge.

The accountability that the intelligence community must have is one of the main reasons that I am supporting the amendment of the gentleman from Indiana (Mr. ROEMER). Some have said if we go through releasing this aggregate number, it starts us down a road to releasing other information. No, no, it does not have to be that way. We can say it is the aggregate number and that is that. We can make a decision, Congress can act, and that can be what the decision is.

It does not mean we are starting down the road to anything, except better accountability to the American people, again for how this fits into our total budget. Our budget is what we spend most of our time working on here, whether it is in the authorizing committees to prepare the policy or the Committee on the Budget to do the

allocations or the Committee on Appropriations to do the final appropriating. So it is what we spend most of our time on, and this amount of money, whatever it is, is a large percentage of that discretionary spending, a very large percentage of it.

So as we have to make decisions about cuts here and there, I think it is perfectly appropriate that the public knows how this intelligence budget fits into the entire budget.

It is difficult to believe that the aggregate budget figure for fiscal years 1997 and 1998 could be made public by DCI Tenet with no impact on national security and the figure for fiscal year 1999 could not be because national security would be harmed if it were disclosed.

It is so sad, it is almost ludicrous, it is almost ludicrous, when what we are trying to do is to protect the community so that there is respect for the job that they do, but what we are trying to do is protect their sources and methods.

By the way, I want to add here that there is much else that should be declassified that is in the realm of classified now, and that is a whole other subject and one that hopefully we will go into in a more serious way as declassification is taking place, but this one simple matter, which says to the American people we are not afraid for them to know the aggregate number that we spend on intelligence.

The gentleman from Indiana (Mr. ROEMER) is doing a service to our country and to this Congress by proposing this amendment. Again, I commend him for his courage, his leadership and urge our colleagues to support his amendment.

Mr. LEWIS of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as most of my colleagues know, for a reasonably short time I have had the privilege of chairing the Committee on Appropriations Subcommittee on Defense that deals with national security. As some of my colleagues have mentioned, there are some of our individual military items that are in what we call the black world. They are kept secret.

They are kept secret for a reason, and that is beyond just their technological potential and capability. There are a lot of things about those systems we would not want our enemies to know. I realize that this amendment has little to do with that, for we are not being asked to peel back the onion, even though the gentlewoman just suggested there are many things that are classified that she would prefer to be unclassified.

Ms. PELOSI. Mr. Chairman, would the gentleman yield?

Mr. LEWIS of California. Let me continue my statement. I would like to continue my statement.

Ms. PELOSI. I appreciate that, but that is not what I said. I am talking about information, and the gentleman knows I am respectful of his position.

Mr. LEWIS of California. I understand what the gentlewoman from California (Ms. PELOSI) was saying, but I am just making a suggestion that there is a parallel here.

One of the pieces of information that is largely public at this point has to do with our submarine force. There are people who would suggest that we do not need very many more submarines. There are others who suggest we ought to have at least as many as we have, and one of the reasons is because they go under the water and nobody really necessarily knows where they are.

In the straits near China, it might be interesting to have leaders wonder whether we are there or not.

Well, I make that point because there is a parallel here. Our intelligence effort is considerably smaller than some of us would like it to be and revealing that number might suggest to many as to why many of us are so concerned. On the other side of that, there is reason and value in suggesting that maybe our enemies or potential enemies think that we spend a lot more money than we do. I would like them to think that, frankly, and there is value in having them think that.

Now, the point that I am making is that this fabulous democracy that we have the privilege of representing here involves the people sending us to this great forum, to sit in committees, to sit on this floor, argue pro and con, develop the information that leads to logical policy conclusions. The public sends us here because they cannot come here to do that detail work. They send us here also knowing full well that there are items relative to the national interest, that not only are they not able to participate day in and day out about but indeed they think we should do it with competence and sometimes in confidence.

The fact is that there is not a ground swell of public outcry out there saying we have to have this number. It has been debated here on the floor for several years, but the numbers of people who are really interested perhaps are reflected by the numbers of Members who have gone to our committee room to read these bills.

Outside of our committee, I believe the number last year where someone came in was seven Members actually went in to read the bill, and I frankly wonder if they read the whole bill. The first page on there shows them what the number is. There are four so far this year.

So there is this huge ground swell out there suggesting that the public has no confidence in us in this very delicate area. I would suggest that the public that actually studies this area knows there is value in not having our

enemies or our potential enemies know how little we spend or how much we spend. Therefore, Mr. Chairman, I strongly oppose this amendment.

Ms. PELOSI. Mr. Chairman, will the gentleman yield?

Mr. LEWIS of California. I yield to the gentlewoman from California.

Ms. PELOSI. I just want to make sure it is clear that I completely agree with everything the gentleman said except for the aggregate number.

Mr. LEWIS of California. I am making the point about the aggregate number.

Ms. PELOSI. I understand that. The gentleman said I said there should be more things. What I am talking about is the Hinchey amendment, which talked about our U.S. involvement in Chile and Guatemala and those things.

Mr. LEWIS of California. Reclaiming my time, Mr. Chairman.

Ms. PELOSI. Not the gentleman's budget, the gentleman is right.

The CHAIRMAN. The gentleman from California has the time.

Mr. LEWIS of California. Mr. Chairman, with that I believe I made the point that I do not want our enemies to know how much we are not spending as well as how much we are spending, and I think that is in the national interest, in the security of our country's interest and perhaps, well not perhaps but very much in the interest of peace.

Mr. DEFAZIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, those who are watching have to be extraordinarily puzzled by this debate. Now since the year I was born, and as everyone can all see I am getting a little long in the tooth, that has been quite a few years, 1947, the United States has kept secret the amount of money that is spent well and the amount of money that is not spent so well on the intelligence services and agencies of the United States.

This certainly could have been a rationale in 1947, the year I was born with the closing of the Iron Curtain, the fear of the Soviet Union and their growth across Europe and around the world; threats that we perceived, but that is history. The Soviet Union has collapsed. We are now confronted with rogue nations and others.

Our defense budget, and the gentleman waxed eloquent about how few go to read it, I do not go to read it. Does anyone know why? It is a Catch 22. If I go and read it, I cannot talk about it but if I do not read it then I can talk about it. I will say we are spending \$30 billion, \$30 billion of hard-earned taxpayer dollars on the intelligence services.

Now we had one agency a few years ago that lost \$4 billion in bookkeeping. They did not know they had it. Well, they found it again after they were audited; and that money has been reallocated, I guess. I do not know. I have

not gone up to check out the secret report.

The only reason it is kept secret is to keep it secret from the American people, not from our enemies. This amount of money is more than the gross domestic product of virtually all of our enemies combined. They would be frightened to death if they knew we were spending \$30 billion to sneak around in their countries or to look at them from satellites or however else it is we are monitoring their activities. But they do not know that and the gentleman says, well, we would not want them to know how little we are spending. Only \$30 billion, only \$30 billion? This is extraordinary.

The gentleman has not even proposed that we would tell them how much we are going to spend this year, which is more secret. It might be an increase of X percent of X which might be Y. Those who took math can follow that. But we do not know. We really do not know, and they would not know. They would only know what we spent last year.

This is an incredibly modest amendment. It will let the taxpayers know how much money we spent last year. We are not going to audit how they spent it. We are not going to audit if they lost billions again like that agency unnamed did a few years ago. We are not going to audit to see if it was well spent, if it was spent on satellites or human information or other secret technologies to monitor every communication around the earth that I am getting a lot of e-mails about in my office. No. We would just know how much money we spent last year on this aggregate budget.

I think it would scare the bejesus out of all of our enemies if they knew how much we were spending. They would be really scared. They cannot come near 1/100th of 1 percent of that for their intelligence budget. So let us reveal it.

Like the gentleman has proposed, we are only going to reveal it for last year. I would go further. I would actually reveal it for this year. I do not think that would be a problem. In fact, we do have a report which came out, which I left over there, but a report in 1996 where in fact, chaired by the Secretary of Defense and others, the commission said that there would be no harm, no threat possible to our national security to publish this year's and even projected years' numbers. In fact, I believe it would scare our enemies into submission.

Mr. DIXON. Mr. Chairman, I move to strike the requisite number of words.

I support the Roemer amendment. This is an amendment that I think the American people are owed today. Perhaps at one time it would not have been appropriate to disclose the aggregate amount of the past year's intelligence budget, but I think the time has come to do so.

The first argument that we hear, it is either expressed or implied, is that if the American people knew the aggregate amount spent on intelligence they would demand that the amount be cut. The problem with this argument is that, even if that were true, that is not a reason to classify the amount.

Executive Order 12958 makes clear that information may only be classified to protect national security and not hinder discussion or debate.

The second argument we hear in one form or another is that making the aggregate figure public would provide no useful information, because a context for spending can only be provided at the program level. Because the public would be dissatisfied with this useless information, irresistible pressure would be brought to declassify more of the intelligence budget. This is called the slippery slope argument, and I disagree with it.

I for one will oppose declassification even at the agency level. Moreover, fear of what might happen in the future plainly does not meet the classification standard in the executive order.

The third argument is that America's enemies, by comparing year-to-year aggregate intelligence budgets, and this is the argument we have heard mostly tonight, could figure out what specific new programs were being funded and the deficiencies these programs were meant to remedy.

□ 1930

It is difficult to believe that an adversary, no matter how strong its analytical skills, could use the top line number to determine program specifics. Several nations disclose their intelligence budgets, and I doubt if our analysts use solely those figures as a basis for a judgment on the specific programs in those budgets.

Additionally, as the report accompanying this year's authorization makes clear, a great deal of information is already made public on the shortcomings of the intelligence community.

Some of us will argue that this year's budget is at an appropriate level; others will argue that the administration has not provided enough money. The administration's budget request is 6.6 percent above last year's appropriation level. Others will argue that, in fact, we should cut it.

If we are to make these arguments on the floor, the American public should know what that inclusive figure is. It is entirely fighting with one's hands behind one's back to say that the President has offered up too much or too little, or we have provided too much or too little without the public knowing and being able to make the judgment on the aggregate number.

Mr. Chairman, I believe this amendment will make an important contribu-

tion to the debate on the resources necessary to support our national security, and I would urge the Members of the House to reflect on this overnight and give the public the opportunity to know last year's aggregate number. I pledge support to resist opening up the budget further. But as we argue too much or too little, the public should know what that reference is.

Mr. GOSS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am very pleased that we are having this debate again. We had it in committee. It was voted down in committee 11-5. In an abundance of fairness, the Committee on Rules has given us an open rule and done all these things, and we are getting to the point.

I think there are a couple of points that need to be said. First of all, accountability is very important, and I believe our committee does a fabulous job on accountability. The point that has been made by several who have spoken on this, any Member can come upstairs and satisfy themselves on any aspect. The American people look to us for that accountability. We are pleased to invite our colleagues to come up to the committee to make sure we are doing our job properly. So far, it seems we are because, as the gentleman from California (Mr. DIXON) pointed out, there is not a huge groundswell on this subject.

The second point that has been made as well it would be great to have some information out there. It might be confidence building. Well, it is true that the President of the United States who does have the authority to disclose this number, it does lie with the President of the United States to reveal it, chose to reveal it through the Director of Central Intelligence in 1997 and 1998. I do not believe there has been an uptick in confidence in the intelligence community because of that.

But something else did happen that caused us a problem. When they got to 1999, they discovered, whoops, we are getting into a trend-line situation. And the President said, "I do not think it is in the national security interest to create these trend lines that our enemies can follow," and he chose not to disclose the number.

In fact, the DCI was taken to court over the number, over the issue. When the DCI got through making his defense, at the appropriate time I will put this in the record, he came to the conclusion that the trend-line fashion could be reasonably expected to damage national security. Judge Hogan for the Federal District Court for the District of Columbia sustained the DCI's conclusions and dismissed the lawsuit on the summary judgment.

So I have the President of the United States, head of the intelligence community, and the courts all agreeing we have got something new, and it is different here.

Now, some point has been made by the Aspin/Brown Commission. I do not claim infallibility for the Aspin/Brown Commission. I was on it. I can ensure the distinguished gentleman from Indiana (Mr. ROEMER), who has made the amendment, that we thought a consensus report was very important. We had quite a debate in Aspin/Brown. And rather than make a big issue over this, we said, let us have a unanimous report, and we put it out.

I would not read too much in it. What I would read into it is that other reports done at the same time, the IC-21 report and the CFR report, does not exactly come to the same conclusions. I think what we found is that, of the many recommendations that came out of Aspin/Brown, this one did not prove to be particularly useful. In fact, because of this trend-line problem, which we did not debate, incidentally, it did not turn out to be helpful.

Another point that has been made tonight is sunshine. We need just one ray of sunshine. Here is 48 pages of sunshine with lots of numbers, disclosure of the things that will not damage our national security. That is important. We make the decisions, if we think it can be disclosed, it should be disclosed, and we try and do that. Of course the President has the final word on the question of classification. It lies with the executive.

The final point I would make, I think, is this; and, again, I do not want this to be contentious, we have had the debate, and there are different views, and they are entirely legitimate, and I accept them. We work in a nonpartisan way upstairs, and we have come to a conclusion that this is not an amendment we wanted on our authorization, but we are bringing it to the Members because one of our Members did.

I honestly believe that the President trusts Americans. We trust Americans. Our committee trusts Americans. Trusting Americans is not what this is about. I do not trust our enemies. I do not know whether they can get anything useful, but I do not want to take the chance if the President of the United States feels that we should not. I do not want to give to any terrorist, to any drug dealer, to any weapons proliferator any information that could be used against us.

So perhaps it is an abundance of caution on my part. But those who have the first line of responsibility on this said, no, let us not reveal it. I think they have made the right judgment. I do not think we should override that judgment.

It is for that reason that I think that we should not approve this amendment, and I will urge our colleagues to vote against the Roemer amendment.

Mr. Chairman, I include the following materials for printing in the RECORD.

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

Steven Aftergood, on behalf of the Federation of American Scientists, Plaintiff, v. Central Intelligence Agency, Defendant.  
Civ. No. 98-2107 (TFH)

DECLARATION OF GEORGE J. TENET

INTRODUCTION

I, GEORGE J. TENET, hereby declare:

1. I am the Director of Central Intelligence (DCI). I was appointed DCI on 11 July 1997. As DCI, I serve as head of the United States intelligence community, act as the principal adviser to the President for intelligence matters related to the national security, and serve as head of the Central Intelligence Agency (CIA).

2. Through the exercise of my official duties, I am generally familiar with plaintiff's civil action. I make the following statements based upon my personal knowledge, upon information made available to me in my official capacity, and upon the advice and counsel of the CIA's Office of General Counsel.

3. I understand that plaintiff has submitted Freedom of Information Act (FOIA) requests for "a copy of documents that indicate the amount of the total budget request for intelligence and intelligence-related activities for fiscal year 1999" and "a copy of documents that indicate the total budget appropriation for intelligence and intelligence-related activities for fiscal year 1999, updated to reflect the recent additional appropriation of 'emergency supplemental' funding for intelligence." I also understand that plaintiff alleges that the CIA has improperly withheld such documents. I shall refer to the requested information as the "budget request" and "the total appropriation," respectively.

4. As head of the intelligence community, my responsibilities include developing and presenting to the President an annual budget request for the National Foreign Intelligence Program (NFIP), and participating in the development by the Secretary of Defense of the annual budget requests for the Joint Military Intelligence Program (JMIP) and Tactical Intelligence and Related Activities (TIARA). The budgets for the NFIP, JMIP, and TIARA jointly comprise the budget of the United States for intelligence and intelligence-related activities.

5. The CIA has withheld the budget request and the total appropriation on the basis of FOIA Exemption (b)(1) because they are currently and properly classified under Executive Order 12958, and on the basis of FOIA Exemption (b)(3) because they are exempted from disclosure by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. The purpose of this declaration, and the accompanying classified declaration, is to describe my bases for determining that disclosure of the budget request or the total appropriation reasonably could be expected to cause damage to the national security and would tend to reveal intelligence methods.

6. I previously executed declarations in this case that were filed with the CIA's motion for summary judgment on 11 December 1998. Those two declarations described my bases for withholding the budget request only. Since the CIA filed its motion for summary judgment, plaintiff has filed an amended complaint seeking release of the total appropriation also. For the Court's convenience, the justifications contained in my earlier declarations are repeated and supplemented in this declaration and the accompanying classified declaration and describe my bases for withholding both the budget request and the total appropriation for fiscal year 1999.

PRIOR RELEASES

7. In October 1997, I publicly disclosed that the aggregate amount appropriated for intelligence and intelligence-related activities for fiscal year 1997 was \$26.6 billion. At the time of this disclosure, I issued a public statement that included the following two points:

First, disclosure of future aggregate figures will be considered only after determining whether such disclosure could cause harm to the national security by showing trends over time.

Second, we will continue to protect from disclosure any and all subsidiary information concerning the intelligence budget; whether the information concerns particular intelligence programs. In other words, the Administration intends to draw the line at the top-line, aggregate figure. Beyond this figure, there will be no other disclosures of currently classified budget information because such disclosures could harm national security.

8. In March 1998, I publicly disclosed that the aggregate amount appropriated for intelligence and intelligence-related activities for fiscal year 1998 was \$26.7 billion. I did so only after evaluating whether the 1998 appropriation, when compared with the 1997 appropriation, could cause damage to the national security by showing trends over time, or otherwise tend to reveal intelligence methods. Because the 1998 appropriation represented approximately a \$0.1 billion increase—or less than a 0.4 percent change—over the 1997 appropriation, and because published reports did not contain information that if coupled with the appropriation, would be likely to allow the correlation of specific spending figures with particular intelligence programs, I concluded that release of the 1998 appropriation could not reasonably be expected to cause damage to the national security, and so I released the 1998 appropriation.

9. Since the enactment of the intelligence appropriation for fiscal year 1998, the budget process has produced: 1) the fiscal year 1998 supplemental appropriations; 2) the Administration's budget request for fiscal year 1999 (a subject of this litigation); 3) the fiscal year 1999 regular appropriation (a subject of this litigation); and 4) the fiscal year 1999 emergency supplemental appropriation (a subject of this litigation). Information about each of these figures—some of it accurate, some not—has been reported in the media. In evaluating whether to release the Administration's budget request or total appropriation for fiscal year 1999, I cannot review these possible releases in isolation. Instead, I have to consider whether release of the requested information could add to the mosaic of other public and clandestine information acquired by our adversaries about the intelligence budget in a way that could reasonably be expected to damage the national security. If release of the requested information adds a piece to the intelligence jigsaw puzzle—even if it does not complete the picture—such that the picture is more identifiable, then damage to the national security could reasonably be expected. After conducting such a review, I have determined that release of the Administration's intelligence budget request or total appropriation for fiscal year 1999 reasonably could be expected to cause damage to the national security, or otherwise tend to reveal intelligence methods. In the paragraphs that follow, I will provide a description of some of the information that I reviewed and how I reached this conclusion. I am unable to describe all of the information I reviewed without disclosing classified information. Additional information in support of my determination is included in my classified declaration.

10. At the creation of the modern national security establishment in 1947, national policymakers had to address a paradox of intelligence appropriations: the more they publicly disclosed about the amount of appropriations, the less they could publicly debate about the object of such appropriations without causing damage to the national security. They struck the balance in favor of withholding the amount of appropriations. For over fifty years, the Congress has acted in executive session when approving intelligence appropriations to prevent the identification of trends in intelligence spending and any correlations between specific spending figures with particular intelligence programs. Now is an especially critical and turbulent period for the intelligence budget, and the continued secrecy of the fiscal year 1999 budget request and total appropriation is necessary for the protection of vulnerable intelligence capabilities.

CLASSIFIED INFORMATION FOIA EXEMPTION  
(b)(1)

11. The authority to classify information is derived from a succession of Executive orders, the most recent of which is Executive Order 12958, "Classified National Security Information." Section 1.1(c) of the Order defines "classified information" as "information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure." The CIA has withheld the budget request and the total appropriation as classified information under the criteria established in Executive Order 12958.

CLASSIFICATION AUTHORITY

12. Information may be originally classified under the Order only if it: (1) is owned by, produced by or for, or is under the control of the United States Government; (2) falls within one or more of the categories of information set forth in section 1.5 of the Order; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security that the original classification authority can identify or describe. The classification of the budget request and the total appropriation meet these requirements.

13. The Administration's budget request and the total appropriation are information clearly owned, produced by, and under the control of the United States Government. Additionally, the budget request and the total appropriation fall within the category of information listed at section 1.5(c) of the Order: "intelligence activities (including special activities), intelligence sources or methods, or cryptology."

14. Finally, I have made the determination required under the Order to classify the budget request and the total appropriation. By Presidential Order of 13 October 1995, "National Security Information", 3 C.F.R. 513 (1996), reprinted in 50 U.S.C. §435 note (Supp. I 1995), and pursuant to section 1.4(a)(2) of Executive Order 12958, the President designated me as an official authorized to exercise original TOP SECRET classification authority. I have determined that the unauthorized disclosure of the budget request or the total appropriation reasonably could be expected to cause damage to the national security. Consequently, I have classified the budget request and the total appropriation at the CONFIDENTIAL level. In the paragraphs below, I will identify and describe the foreseeable damage to national security that reasonably could be expected to

result from disclosure of the budget request or the total appropriation.

DAMAGE TO NATIONAL SECURITY

15. Disclosure of the budget request or the total appropriation reasonably could be expected to cause damage to the national security in several ways. First, disclosure of the budget request reasonably could be expected to provide foreign governments with the United States' own assessment of its intelligence capabilities and weakness. The difference between the appropriation for one year and the Administration's budget request for the next provides a measure of the Administration's unique, critical assessment of its own intelligence programs. A requested budget decrease reflects a decision that existing intelligence programs are more than adequate to meet the national security needs of the United States. A requested budget increase reflects a decision that existing intelligence programs are insufficient to meet our national security needs. A budget request with no change in spending reflects a decision that existing programs are just adequate to meet our needs.

16. Similar insights can be gained by analyzing the difference between the total appropriation by Congress for one year and the total appropriation for the next year. The difference between the appropriation for one year and the appropriation for the next year provides a measure of the Congress' assessment of the nation's intelligence programs. Not only does an increased, decreased, or unchanged appropriation reflect a congressional determination that existing intelligence programs are less than adequate, more than adequate, or just adequate, respectively, to meet the national security needs of the United States, but an actual figure indicates the degree of change.

17. Disclosure of the budget request or the total appropriation would provide foreign governments with the United States' own overall assessment of its intelligence weaknesses and priorities and assist them in redirecting their own resources to frustrate the United States' intelligence collection efforts, with the resulting damage to our national security. Because I have determined it to be in our national security interest to deny foreign governments information that would assist them in assessing the strength of United States intelligence capabilities, I have determined that disclosure of the budget request or the total appropriation reasonably could be expected to cause damage to the national security. I am unable to elaborate further on the bases for my determination without disclosing classified information. Additional information in support of my determination is included in my classified declaration.

18. Second, disclosure of the budget request or the total appropriation reasonably could be expected to assist foreign governments in correlating specific spending figures with particular intelligence programs. Foreign governments are keenly interested in the United States' intelligence collection priorities. Nowhere are those priorities better reflected than in the level of spending on particular intelligence activities. That is why foreign intelligence services, to varying degrees, devote resources to learning the amount and objects of intelligence spending by other foreign governments. The CIA's own intelligence analysts conduct just such analyses of intelligence spending by foreign governments.

19. However, no intelligence service, U.S. or foreign, ever has complete information. They are always revising their intelligence

estimates based on new information. Moreover, the United States does not have complete information about how much foreign intelligence services know about U.S. intelligence programs and funding. Foreign governments collect information about U.S. intelligence activities from their human intelligence sources; that is, "spies." While the United States will never know exactly how much our adversaries know about U.S. intelligence activities, we do know that all foreign intelligence services know at least as much about U.S. intelligence programs and funding as has been disclosed by the Congress or reported by the media. Therefore, congressional statements and media reporting of the fiscal year 1999 budget cycle provide the minimum knowledge that can be attributed to all foreign governments, and serve as a baseline for predictive judgments of the possible damage to national security that could reasonably be expected to result from release of the budget request or the total appropriation.

20. Budget figures provide useful benchmarks that, when combined with other public and clandestinely-acquired information, assist experienced intelligence analysts in reaching accurate estimates of the nature and extent of all sorts of foreign intelligence activities, including covert operations, scientific and technical research and development, and analytic capabilities. I expect foreign intelligence services to do no less if armed with the same information. While other sources may publish information about the amounts and objects of intelligence spending that damages the national security, I cannot add to that damage by officially releasing information, such as the budget request or the total appropriation, that would tend to confirm or deny these public accounts. Such intelligence would permit foreign governments to learn about United States' intelligence collection priorities and redirect their own resources to frustrate the United States' intelligence collection efforts, with the resulting damage to our national security. Therefore, I have determined that disclosure of the budget request or the total appropriation reasonably could be expected to cause damage to the national security. I am unable to elaborate further on the basis for my determination without disclosing classified information. Additional information in support of my determination is included in my classified declaration.

21. In addition, release of both the budget request and the total appropriation would permit one to calculate the exact difference between the Administration's request and Congress' appropriation. It is during the congressional debate over the Administration's budget request that many disclosures of specific intelligence programs are reported in the media. Release of the budget request and total appropriation together would assist our adversaries in correlating the added or subtracted intelligence programs with the exact amount of spending devoted to them.

22. And third, disclosure of the budget request or the total appropriation reasonably could be expected to free foreign governments' limited collection and analysis resources for other efforts targeted against the United States. No government has unlimited intelligence resources. Resources devoted to targeting the nature and extent of the United States' intelligence spending are resources that cannot be devoted to other efforts targeted against the United States. Disclosure of the budget request or the total appropriation would free those foreign resources for other intelligence collection activities directed against the United States,

with the resulting damage to our national security. Therefore, I have determined that disclosure of the budget request or the total appropriation reasonably could be expected to cause damage to the national security.

23. In summary, I have determined that disclosure of the budget request or the total appropriation reasonably could be expected to provide foreign intelligence services with a valuable benchmark for identifying and frustrating United States' intelligence programs. For all of the above reasons, singularly and collectively, I have determined that disclosure of the budget request or the total appropriation for fiscal year 1999 reasonably could be expected to cause damage to the national security. Therefore, I have determined that the budget request and the total appropriation are currently and properly classified CONFIDENTIAL.

INTELLIGENCE METHODS—FOIA EXEMPTION  
(b)(3)

24. Section 103(c)(6) of the National Security Act of 1947, as amended, provides that the DCI, as head of the intelligence community, "shall protect intelligence sources and methods from unauthorized disclosure." Disclosure of the budget request or the total appropriation would jeopardize intelligence methods because disclosure would tend to reveal how and for what purposes intelligence appropriations are secretly transferred to and expended by intelligence agencies.

25. There is no single, separate appropriation for the CIA. The appropriations for the CIA and other agencies in the intelligence community are hidden in the various annual appropriations acts. The specific locations of the intelligence appropriations in those acts are not publicly identified, both to protect the classified nature of the intelligence programs themselves and to protect the classified intelligence methods used to transfer funds to and between intelligence agencies.

26. Because there are a finite number of places where intelligence funds may be hidden in the federal budget, a skilled budget analyst could construct a hypothetical intelligence budget by aggregating suspected intelligence line items from the publicly-disclosed appropriations. Release of the budget request or the total appropriation would provide a benchmark to test and refine such a hypothesis. Repeated disclosures of either the budget request or total appropriation could provide more data with which to test and refine a hypothesis. Confirmation of the hypothetical budget could disclose the actual locations in the appropriations acts where the intelligence funds are hidden, which is the intelligence method used to transfer funds to and between intelligence agencies.

27. Sections 5(a) and 8(b) of the CIA Act of 1949 constitute the legal authorization for the secret transfer and spending of intelligence funds. Together, these two sections implement Congress' intent that intelligence appropriations and expenditures, respectively, be shielded from public view. Simply stated, the means of providing money to the CIA is itself an intelligence method. Disclosure of the budget request or the total appropriation could assist in finding the locations of secret intelligence appropriations, and thus defeat these congressionally-approved secret funding mechanism. Therefore I have determined that disclosure of the budget request or the total appropriation would tend to reveal intelligence methods that are protected from disclosure. I am unable to elaborate further on the bases for my determination without disclosing classified information. Additional information in support of

my determination is included in my classified declaration.

CONCLUSION

28. In fulfillment of my statutory responsibility as head of the United States intelligence community, as the principal adviser to the President for intelligence matters related to the national security, and as head of the CIA, to protect classified information and intelligence methods from unauthorized disclosure, I have determined for the reasons set forth above and in my classified declaration that the Administration's intelligence budget request and the total appropriation for fiscal year 1999 must be withheld because their disclosure reasonably could be expected to cause damage to the national security and would tend to reveal intelligence methods.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of April, 1999.

GEORGE J. TENET,

Director of Central Intelligence.

MEMORANDUM OPINION

Pending before the Court is Defendant Central Intelligence Agency ("CIA")'s Motion for Summary Judgment. After careful consideration of Defendant's Motion, Plaintiff's Memorandum in Opposition, Defendant's reply, the arguments presented at the November 1 hearing, and upon a second review of both classified affidavits as well as the unclassified affidavit filed by Defendant in this case, the Court will grant Defendant's Motion for Summary Judgment.

BACKGROUND

Plaintiff Steven Aftergood, on behalf of the Federation of American Scientists, seeks disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, of the Administration's total budget request for fiscal year 1999 for all intelligence and intelligence-related activities. Defendant, the United States Central Intelligence Agency ("CIA"), denied plaintiff's request on the basis that the information is exempt from FOIA's disclosure requirements because it is properly classified under Executive Order 12958 in the interest of national defense or foreign policy (Exemption 1) and because release of this figure would tend to reveal intelligence sources and methods that are specifically exempted from disclosure by statute (Exemption 3). On December 11, 1998, the Defendant moved for summary judgment on the basis of three declarations from George J. Tenet, Director of Central Intelligence ("DCI"), one unclassified filed as an exhibit to Defendant's Motion for Summary Judgment, and two classified which were filed under seal and ex parte for the Court's in camera review. These declarations explain why DCI Tenet believes the release of the figure requested by Plaintiff could reasonably be expected to cause damage to the national security and would tend to reveal intelligence methods and sources.

DISCUSSION

I. FOIA Exemption 1

Exemption 1 of FOIA exempts from mandatory disclosure records that are: (A) specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy, and (B) are in fact properly classified pursuant to such Executive Order. 5 U.S.C. §552(b)(1). The Executive Order currently in effect is Executive Order ("E.O.") 12958, "Classified National Security Information."

Courts have prescribed a two-part test, part substantive and part procedural, to be applied in determining whether material has been properly withheld under Exemption 1.

Substantively, the agency must show that the records at issue logically fall within the exemption, *i.e.*, that an Executive Order authorizes that the particular information sought be kept secret in the interest of national defense or foreign policy. Procedurally, the agency must show that it followed the proper procedures in classifying the information. *Salisbury v. United States*, 690 F.2d 966, 970-72 (D.C. Cir. 1982). If the agency meets both tests, it is then entitled to summary judgment. See, *e.g.*, *Abbotts v. NRC*, 766 F.2d 604, 606 (D.C. Cir. 1985); *Miller v. Casey*, 730 F.2d 773, 776 (D.C. Cir. 1984).

a. The Procedural Requirements of Exemption 1

Based on the unclassified Declaration of DCI Tenet, the CIA has demonstrated that it has followed the proper procedures in classifying the total budget request for intelligence activities. Proper classification must be made by an original classification authority who determines that the information is owned by, produced by or for, or is under the control of the United States Government; that it falls within one or more categories of information set forth in section 1.5 of the Executive Order; and that the information's unauthorized disclosure reasonably could be expected to result in damage to the national security that the original classification authority can identify or describe. See E.O. 12958, §1.2(a); see also 32 C.F.R. §2001.10(b) (Information Security Oversight Office directive explaining that agency classifier must be able to identify and describe damage to national security potentially caused by unauthorized disclosure).

DCI Tenet is an official authorized to exercise original TOP SECRET classification authority. Tenet Declaration ¶13; see Presidential Order of 13 October 1995, "National Security Information," 3 C.F.R. §513 (1996); E.O. 12958 §1.4(a)(2). Further DCI Tenet has determined that the amount of the budget request for all intelligence activities is owned by the United States Government, see Tenet Declaration, ¶12; that it falls within the category of information listed at section 1.5(c) of the Executive Order, described as "intelligence activities (including special activities), intelligence sources or methods, or cryptology," see *Id.*; and that its disclosure reasonably could be expected to cause damage to the national security, see *Id.* at ¶¶ 13 et seq.

Plaintiff contends that DCI's determination is at odds with that of the President of the United States and that this conflict renders DCI determination invalid. However, although the President clearly has the authority to do so, the President has never released or ordered the release of, the Administration's budget request or the total appropriated amount for intelligence activities for fiscal year 1999. Therefore, the statement of a Presidential spokesman, made three years earlier, that, as a general matter, the President believed "that disclosure of the annual amount appropriated for intelligence purposes will not, in itself, harm intelligence activities," is neither on point nor in any way legally binding. Plaintiff has offered this Court no evidence that the President has ever addressed the impact of disclosure of the Administration's budget request or the total amount appropriated for intelligence activities for fiscal year 1999. The fact that the President encouraged release of similar information in earlier years is not determinative here. Unless or until the President explicitly orders the release of this information or withdraws his authorization of DCI Tenet to make these classified determinations, and absent a finding by this

Court that DCI Tenet was somehow acting in bad faith in refusing to release this information, the Court finds that TCI Tenet is authorized to make this highly fact-dependent classification determination at issue in this case, and that he has properly done so here.

*b. The Substantive Requirements of Exemption 1*

To demonstrate that the budget request for intelligence falls within Exemption 1, the CIA must also explain why the information at issue properly falls within one or more of the categories of classifiable information, in this case "intelligence sources or methods," see E.O. 12958 §1.5(c), and why its unauthorized disclosure could reasonably be expected to result in damage to the national security.

When determining whether the records at issue are properly within the scope of the exemption; this Court must "determine the matter *de novo*." 5 U.S.C. §552(a)(4)(B). In Exemption 1 cases, Congress has indicated and courts have consistently recognized, that an agency's determination as to potential adverse effects resulting from public disclosure of a classified record should be expected of substantial weight. See, e.g., *Bowers v. Department of Justice*, 930 F.2d 350, 357 (4th Cir. 1991) ("What fact or bit of information may compromise national security is best left to the intelligence experts."); *Taylor v. Department of the Army*, 684 F.2d 99, 109 (D.C. Cir. 1982) (the agency's determination should be accorded "utmost deference"); *Washington Post v. DOD*, 766 F.Supp. 1, 6-7 (D.D.C. 1991) (judicial review of agency classification decision should be "quite deferential"). The agency's determination merits this deference because "[e]xecutive departments responsible for national defense and foreign policy matters have unique insights into what adverse affects [sic] might occur as a result of public disclosure of a particular classified record." *Salisbury*, 690 F.2d at 970 (quoting S. Rep. No. 1200, 93rd Cong., 2d Sess. 12 (1974)). Thus, summary judgment for the government in an Exemption 1 FOIA action should be granted on the basis of agency affidavits if they simply contain "reasonable specificity" and if they are not called into question by contradictory evidence in the record or by evidence of agency bad faith. *Halperin v. CIA*, 629 F.2d 144, 148 (D.C. Cir. 1980).

DCI Tenet's Declarations meet this deferential standard. Essentially, DCI Tenet explains that disclosure of the budget request reasonably could be expected to cause damage to national security in several ways: (1) disclosure "reasonably could be expected to provide foreign governments with the United States' own assessment of its intelligence capabilities and weaknesses," Tenet Declaration ¶ 14; (2) disclosure "reasonably could be expected to assist foreign governments in correlating specific spending figures with particular intelligence programs," Tenet Declaration ¶ 16; and (3) official disclosure could be expected to free foreign governments' limited collection and analysis resources for other efforts targeted against the United States, Tenet Declaration ¶ 18.

Obviously, DCI Tenet cannot be certain that damage to our national security would result from release of the total budget request for 1999, but the law does not require certainty or a showing of harm before allowing an agency to withhold classified information. Courts have recognized that an agency's articulation of the threatened harm must always be speculative to some extent, and that to require an actual showing of harm would be judicial "overstepping." See *Halperin*, 629 F.2d at 149. In the area of intelligence sources and methods, the D.C. Cir-

cuit has ruled that substantial deference is due to an agency's determination regarding threats to national security interests because this is "necessarily a region for forecasts in which the CIA's informed judgment as to potential future harm should be respected." *Gardels v. CIA*, 689 F.2d 1100, 1106 (D.C. Cir. 1982). Further, the Court noted that "the CIA has the right to assume that foreign intelligence agencies are zealous ferret." *Id.*

In this case, plaintiff has offered no contrary record evidence undermining the validity of DCI Tenet's highly fact-dependent determination. First, the Brown Commission's 1996 recommendations in favor of disclosure are not binding on this Court. The Brown Commission was a congressionally-charted commission made up of private citizens who lacked classification authority and who made non-binding recommendations to Congress and the President on intelligence matters. Neither Congress nor the President ever enacted the Brown Commission's recommendation on public disclosure of the intelligence budget. Nor did the Brown Commission ever consider the precise issue of classification presented here: whether, in 1999, and under the circumstances described in DCI Tenet's unclassified and classified declarations, it would recommend disclosure of the budget figures for that particular year.

Second, the fact that DCI Tenet disclosed the total intelligence budget in prior years is not necessarily adverse record evidence. On the contrary, this Court finds that it indicates DCI Tenet's careful, case-by-case analysis of the impact of each disclosure and his willingness to accommodate budget requests whenever possible. When he made these prior disclosures, DCI Tenet emphasized that he would continue to make that case-by-case determination in future year. Tenet Declaration ¶ 7. Here, DCI Tenet has explained, in both his classified and unclassified declarations, the rationale underlying his predictive judgment that release of the figures for fiscal year 1999 could reasonably be expected to cause damage to national security. Therefore, the Court must defer to DCI Tenet's decision that release of a third consecutive year, amidst the information already publicly-available, provides too much trend information and too great a basis for comparison and analysis for our adversaries.

*II. FOIA Exemption 3*

The CIA is also entitled to summary judgment on the basis that the budget request is exempt from disclosure under FOIA Exemption 3. Exemption 3 excludes from mandatory disclosure information that is "specifically exempted from disclosure by statute . . . provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. §552(b)(3)(A) & (B).

In examining an Exemption 3 claim, a court must determine, first, whether the claimed statute is a statute of exemption under FOIA, and, second, whether the withheld material satisfied the criteria of the exemption statute. *CIA v. Sims*, 471 U.S. 159, 167 (1985); *Fitzgibbon v. CIA*, 911 F.2d 755, 761 (D.C. Cir. 1990). In this case, the CIA has withheld information from plaintiff because DCI Tenet has determined that the budget request falls within Section 103(c)(6) of the National Security Act of 1947, as amended, 50 U.S.C. §403-3(c)(6) (formerly section 403(d)(3)), which requires the DCI to "protect

intelligence sources and methods from unauthorized disclosure." It is well settled that section 403-3(c)(6) falls within Exemption 3. *Sims*, 471 U.S. at 167. Thus, the Court need only consider whether the Administration's budget request falls within that statute. *Id.*

There is no doubt that the scope of the statute is broad; as the Supreme Court has commented, "[p]lainly the broad sweep of this statutory language comports with the nature of the [CIA's] unique responsibilities." *Sims*, 471 U.S. at 169. The legislative history of §403-3(c)(6) also makes clear that Congress intended to give the [DCI] broad authority to protect the secrecy and integrity of the intelligence process." *Id.* at 170. To establish that the budget request is exempt under FOIA, therefore, the CIA need only demonstrate that the information "relates" to intelligence sources and methods. *Fitzgibbon*, 911 F.2d at 762. Like the DCI's determination under Exemption 1, the DCI's determination under Exemption 3 is entitled to "substantial weight and due consideration." *Id.*

One nexus between the Administration's budget request and "disclosure of intelligence sources and methods" is found in the special appropriations process used for intelligence activities. Disclosure of the budget request would tend to reveal "how and for what purposes intelligence appropriations are secretly transferred to and expended by intelligence agencies." Tenet Declaration ¶ 20.

There is no single, separate appropriation for the CIA. Appropriations for the CIA and other agencies in the intelligence community are hidden in the various appropriation acts. *Id.* ¶ 21. The locations are not publicly identified, both to protect the classified nature of the intelligence programs that are funded and to protect the classified intelligence methods used to transfer funds to and between intelligence agencies. *Id.* Sections 5(a) and 8(b) of the CIA Act of 1949, 50 U.S.C. §§403f, 403j, provide the legal authorizations for the secret transfer and spending of intelligence funds. *Id.* ¶ 23. DCI Tenet has asserted that since there are a finite number of places where intelligence funds may be hidden in the federal budget, a budget analyst could construct a hypothetical intelligence budget by aggregating suspected intelligence line items from the publicly-disclosed appropriations and that repeated disclosures of either the budget request or the budget appropriation would provide more data with which to test and refine the hypothesis. *Id.* Plaintiff denies the viability of this argument but provides no conclusive evidence of its implausibility.

Several courts have held that information tending to reveal the secret transfer and spending of intelligence funds is exempt from disclosure under FOIA as an "intelligence method." See e.g., *Military Audit Project v. Casey*, 656 F.2d 724, 745 (D.C. Cir. 1981). Therefore, because DCI Tenet has determined that release of the total budget request would tend to reveal secret budgeting mechanisms constituting "intelligence methods," it is also exempt from disclosure under FOIA Exemption 3.

CONCLUSION

The Declarations of DCI Tenet logically establish that release of the Administration's budget request for fiscal year 1999 could reasonably be expected to result in harm to the national security and to reveal intelligence "sources and methods." On the basis of these declarations and the entire record in this case as well as the discussion above, this Court will grant the CIA's Motion for Summary Judgment. An order will accompany this Memorandum Opinion.

November 12, 1999.

THOMAS F. HOGAN,  
*United States District Judge.*

ORDER

In accordance with the accompanying memorandum opinion, it is hereby ORDERED that Defendant Central Intelligence Agency's Motion for Summary Judgment is granted. It is further hereby

ORDERED that this case is dismissed with prejudice.

November 12, 1999.

THOMAS F. HOGAN,  
*United States District Judge.*

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. ROEMER).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. ROEMER. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 506, further proceedings on the amendment offered by the gentleman from Indiana (Mr. ROEMER) will be postponed.

The point of no quorum is considered withdrawn.

AMENDMENT NO. 3 OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. TRAFICANT:

At the end of title III, insert the following new section (and conform the table of contents accordingly):

**SEC. 306. UPDATE OF REPORT ON EFFECTS OF FOREIGN ESPIONAGE ON UNITED STATES TRADE SECRETS.**

By not later than 270 days after the date of the enactment of this Act, the Director of Central Intelligence shall submit to Congress a report that updates, and revises as necessary, the report prepared by the Director pursuant to section 310 of the Intelligence Authorization Act for Fiscal Year 2000 (Public Law 106-120, 113 Stat. 1613) (relating to a description of the effects of espionage against the United States, conducted by or on behalf of other nations, on United States trade secrets, patents, and technology development).

Mr. TRAFICANT. Mr. Chairman, this amendment calls for an update from our intelligence community on the effects of foreign espionage on United States trade secrets, on, in fact, our patents, our technology development, our industrial complex, our military industrial complex, and the basic elements that fuel our economy and is our national security.

It is straightforward. It makes sense. I urge its approval.

Mr. Chairman, I yield to the gentleman from Florida (Mr. Goss).

Mr. GOSS. Mr. Chairman, I thank the gentleman from Ohio (Mr. TRAFICANT) for yielding. I want to thank the gentleman from Ohio for his interest and his work with the committee and his

support for our men and women of our intelligence community. I appreciate his efforts on behalf of the economy of the United States of America, which he is very outspoken on and very forthright.

This amendment is eminently reasonable, and I would accept the amendment on behalf of the committee. I appreciate the consideration of the gentleman from Ohio of the best interest of the intelligence community and his willingness to cooperate with the committee on that amendment.

Mr. DIXON. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I am proud to yield to the gentleman from California.

Mr. DIXON. Mr. Chairman, the minority has no problem with the amendment, and I will be glad to accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. TRAFICANT).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. TRAFICANT. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 506, further proceedings on the amendment offered by the gentleman from Ohio (Mr. TRAFICANT) will be postponed.

The point of no quorum is considered withdrawn.

AMENDMENT NO. 4 OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. TRAFICANT:

At the end of the bill, add the following new section:

SEC. —. The Director shall report to the House Permanent Select Committee on Intelligence within 60 days whether the policies and goals of the People's Republic of China constitute a threat to our national security.

Mr. TRAFICANT. Mr. Chairman, this is a straightforward amendment. I just listened to the last debate. I have a tendency to agree with the gentleman from Florida (Chairman GOSS). The numbers to me are not important. I look at what I consider to be results.

I believe if America would have investigated allegations in the Chinese meddling into our political system and to buying and spying on our military secrets and technology, if we would have spent as much money on that as we spent on investigating Microsoft, I think our Nation would be safer.

But I have a question here today to the Congress. I wonder if the Central Intelligence Agency or if our intelligence community has basically said to Congress, "be careful about China." I do not know. We are going to take up

a big vote here later this week, and I believe we are going to go ahead and ratify and approve a massive trade agreement with China.

I do not know how much we are spending. But, quite frankly, what do they advise us? What has our intelligence community taken the time to educate us about where we are going when I read that China just purchased 24 cruise missiles from Russia, and the Pentagon spokesman, on conditions of anonymity said, any American Naval vessel without the protection of a carrier fleet is "dead meat." This is the first shipment of the cruise missiles. Now, look, a second shipment they said is expected in several months.

For the first time in history, China, which is showing an aggressive posture to Taiwan, for the first time in history, our administration is not willing to, in fact, help Taiwan. Now we are embarking on a massive trade agreement. I think the trade agreement bothers me on the surface with an \$80 billion surplus now surpassing Japan, and Japan has never opened their markets, and every President from Nixon to Clinton threatening to open the markets. So, evidently, they have not abided by any agreement we have ever signed.

I am concerned about the national security implications with China. The Traficant amendment says tell us what are the goals and policies of the People's Republic of China, a communist nation, and if in fact they constitute a threat to our national security.

Now, if I am off base with that, then God save the Republic, because we should all have been briefed in our office by the CIA telling us what is going on over there. Otherwise, we make this suggestion, give \$1 billion to CNN, \$1 billion. Save a lot of money. Help our people with the balance. Because they told us about the fall of the Soviet Union, the Berlin Wall, the invasion of Kuwait. We did not hear it from CIA. We heard it on CNN. So I think we should know that.

The Traficant amendment says tell us and go put it down on paper. The intelligence community cannot have it both ways and say, Aw shucks, look what happened. Tell us if it is a good deal or a bad deal and if we have got a problem. They have got to put it on paper, and history can reflect it.

With that, I urge an aye vote that would require our intelligence community to advise us if there is this powerful threat.

Mr. Chairman, I yield to the gentleman from Florida (Mr. GOSS).

Mr. GOSS. Mr. Chairman, I thank the distinguished gentleman from Ohio (Mr. TRAFICANT) for yielding to me again. I appreciate his efforts to raise the consciousness of the House to the risk we face from the People's Republic of China. He has obviously done it very well.

I certainly believe the DCI can operate within the 60-day timeframe that

we have talked about. In fact, I think he can do it more speedily than that, given the other matters going on of interest to this body. I would be prepared to accept the amendment and thank the gentleman again for his contribution.

Mr. DIXON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to accept the amendment, and I rise to support the amendment. I think the gentleman from Ohio (Mr. TRAFICANT) has an excellent amendment. But I also think it is fair to point out that the gentleman from Virginia (Mr. WOLF), the chairman of the Subcommittee on Transportation of the Committee on Appropriations, has been encouraging Members of this House to get two briefings from the Central Intelligence Agency.

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In fact, I received those briefings with staff on Friday. So I cannot say that the Central Intelligence Agency does not have information available. Perhaps this will better organize it and have a date certain for it to come, but any Member can request those two briefings and I think it is only fair to point that out.

Mr. TRAFICANT. Mr. Chairman, will the gentleman yield?

Mr. DIXON. I yield to the gentleman from Ohio.

Mr. TRAFICANT. I appreciate the gentleman yielding, and I would simply ask, does the Central Intelligence Agency, under the milieu of events occurring around the world, do they support our efforts in moving forward with the trade agreement? And does the Central Intelligence Agency believe that the behavior of China poses a significant threat?

I think just having people coming in and talking to us, I want them to put it down on paper, and I think that is what Congress should require. We may be, without a doubt, dealing with the most serious threat in our Nation's history, and our children and their children, God forbid, may some day realize that. I hope that does not occur.

So with that, I appreciate the time the gentleman has afforded me and appreciate the gentleman's statement.

Mr. DIXON. Reclaiming my time, Mr. Chairman, the Central Intelligence Agency made it clear from the very beginning of the briefing that they had obtained certain information and analyzed it; it was up to the Member of Congress receiving that briefing to make a judgment on it.

So I do not think that we will find the Central Intelligence Agency making a judgment. In this particular case, as it relates to China and whether they have permanent normal trade relations, that is up to each Member of Congress based in part on what the analysis is. But as far as whether they are a threat or a nonthreat, the CIA

made it very clear that they were not taking a position in this debate and that they were presenting what they felt was sound information and that we should, in fact, make our own judgment.

Mr. TRAFICANT. Mr. Chairman, if the gentleman will continue to yield, the amendment says the CIA shall let us know whether or not the policies and goals of the People's Republic of China constitutes a threat to our national security. That is all in writing.

Mr. DIXON. I realize the amendment says that, but the threat is in the eye of the beholder. And one agency may think it is a threat and another agency may think that it is a nonthreat.

But in the final analysis, we have to take intelligence information, that every Member of this House has been encouraged over and over by the gentleman from Virginia (Mr. WOLF) to receive, and make a judgment call Wednesday or some time in the future.

The CHAIRMAN. The question on the amendment offered by the gentleman from Ohio (Mr. TRAFICANT).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. TRAFICANT. Mr. Speaker, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 506, further proceedings on the amendment offered by the gentleman from Ohio (Mr. TRAFICANT) will be postponed.

The point of no quorum is considered withdrawn.

Mr. ROEMER. Mr. Chairman, I rise in strong bipartisan support of the fiscal year 2001 intelligence authorization.

I believe this bill sets about the right level of overall funding for intelligence activities next year. The President requested 6.6 percent more in funding for national programs over last year's appropriated level. While some have complained that the administration failed to request sufficient funding for intelligence activities, the testimony we heard during our budget hearings did not convince me we needed to go beyond the relatively robust topline increase in the request.

Nevertheless, there was room for concern about some aspects of the request and the allocation of those resources. I have been very critical of one classified program of great cost and exceedingly doubtful impact. I have also been extremely concerned that the heightened pace of U.S. Government counterterrorism efforts arising out of the threat identified over the Millennium could not be sustained through the end of this fiscal year and into FY 2001. Finally, through oversight and legislative hearings, the compiled evidence significantly increased my concerns about the state of language capabilities of intelligence community personnel. I have found that not only are there too few people speaking the language in country, but too often the ones who do are not sufficiently proficient. I addressed these three concerns with an amendment to transfer some

of the funding from the highly questionable classified program to areas of greater need involving terrorism and language proficiency. This was a bipartisan effort and I thank Chairman GOSS and Ranking Member DIXON for their help.

Mr. Chairman, later in the debate I will offer an amendment to require an annual unclassified statement of the aggregate amount appropriate for the previous fiscal year. It is my understanding that one of the reasons offered for why the intelligence budget total should remain classified is that its disclosure may provide foreign governments with the U.S. Government's own assessment of its intelligence capabilities and weaknesses. This is not persuasive. The fact of the matter is that in our great democratic country, there is considerable unclassified information openly published containing official assessments of intelligence capabilities and shortcomings. The intelligence community has, in fact, published the 1997 and 1998 aggregate level of spending. There are legitimate concerns about protecting through counter intelligence measures and enhanced security our sensitive information. An accurate report of the aggregate number appropriated for intelligence each year would cause no harm to national security and would clearly be a welcome addition to the public's understanding of the roles and mission of the intelligence community. It could also provide some measure of accountability from the agencies. I urge my colleagues to support my amendment later this week.

Mr. GOSS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. MCINNIS) having assumed the chair, Mr. THORNBERRY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4392) to authorize appropriations for fiscal year 2001 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, had come to no resolution thereon.

#### GENERAL LEAVE

Mr. GOSS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill (H.R. 4392) to authorize appropriations for fiscal year 2001 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, and that I may include tabular and other extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.