OGC 69-0346

24 February 1969

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with Senator Sam J. Ervin, Jr.

1. On 24 February 1969, at 3 p. m., Mr. Maury and Mr. Houston met with Senator Sam J. Ervin, Jr. Also present were Rufus L. Edmisten and Marcia J. MacNaughton of the staff of the Subcommittee on Constitutional Rights, Senate Committee on Judiciary.

2. The subject was S. 782, the successor to S. 1035, and Mr. Houston opened with reference to the opinion by the Library of Congress on protection of CIA's information which Senator Ervin had introduced into the Congressional Record and which he had mentioned to the Director. Senator Ervin had read our memorandum of law differing with the Library of Congress' conclusions, and Mr. Houston followed along with some discussion of the technical aspects of what we ran into when we found ourselves in court. Senator Ervin either did not grasp, or did not agree with, the security implications we foresaw arising out of court cases based on his law and said, in effect, that he felt this would not change CIA's situation. He pointed out that at the request of the Agency he had made a number of changes in the bill which he felt were well founded, and that he had taken care of all the possible objections, so he was opposed to granting CIA any exemption from the whole bill. Mr. Houston said it was obvious that our differences arose from the different concept of the role the court would play as a result of the passage of the bill.

3. Mr. Maury dwelt at some length on our concept of personnel security, pointing out the intensive efforts of the opposition intelligence agencies to penetrate us, the stress and

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strain of agents operating abroad, and the need for supervision and knowledge of our employees. He felt the bill would impair our right to inquire as to certain employee activities, but Senator Ervin differed, saying that if we thought that the matters in question were a danger to our security they would be pertinent to his employment and, therefore, would not be barred by the bill.

4. The Senator brought up his frequently expressed distrust of the polygraph. In response, Mr. Maury discussed how we use the polygraph and its effectiveness, emphasizing that it was merely a tool, not a definitive test. Senator Ervin said that if he were alone on this bill he would abolish the polygraph as he did not think it was a valid approach. He then said that he had received a great many complaints from people about the use of the polygraph, particularly about certain of the questions asked. Mr. Maury pointed out that no reports of such complaints had come back to us and we would like to know something about the nature of the complaints, particularly what questions were found most objectionable. Senator Ervin conceded that many of the complainants might have been applicants rather than employees and there might have been more complaints from NSA than from CIA, but he did not offer any further information on this subject.

5. Mr. Maury asked for Senator Ervin's interpretation of the right to counsel under the bill, and the Senator agreed that as written an employee could ask for counsel as soon as he felt he was getting any sort of hostile questioning or disciplinary interviews. Mr. Maury said he thought this impaired the command structure and, while we would agree to the right of counsel in serious situations where a man's rights might be substantially damaged, there should be some limitation. Later on in the conversation, Senator Ervin appeared to concede that there was some merit to this argument and said he might consider appropriate language limiting the right to counsel. There was also further talk about the fact that applicants were given certain rights under the bill which could lead to harassment by the Students for a Democratic Society or similar groups. Again, this seemed to appeal to Senator Ervin, and he said he might give some consideration to limiting the applicants' rights.

6. Outside of the two small points mentioned above, it was clear that Senator Ervin thought he had done everything possible for CIA in his earlier changes and he was adamantly

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opposed to a total exemption for the Agency. The meeting was friendly, however, and in fact Senator Ervin said he enjoyed it. He seemed relaxed and pleasant throughout. STAT

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OGC chrono
subject LEGISLATION-S. 782
OGC:LRH:jeb

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S. 782 - Specific Problems Affecting the Central Intelligence Agency

Section 1(b), while commendably protecting an employee from compulsory attendance at meetings and lectures on matters unrelated to his official duties, would, for example, make it unlawful for any department or agency to "take notice" of the attendance of one of its employees at a meeting held by a subversive group or organization. While it is doubted that this is the intent of the bill, it clearly is one of the effects of Section 1(b).

Section 1(d), in making it unlawful to require an employee to make any report of his activities or undertakings not related to the performance of official duties, is similar in its effect to Section 1(b). It poses the question of whether the Agency, having discovered that one of its employees is in regular and unreported contact with an intelligence agent or official of a foreign government, would be violating the law in asking the employee for an explanation of this relationship, particularly in the case in which the employee's official duties do not relate to matters involving that particular foreign government. Further, this Section is in conflict with a long-established policy that employees of the Agency must obtain prior approval in making public speeches or writing for publication.

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These and additional restrictions are established to prevent the inadvertent disclosure of sensitive intelligence through employee activities or undertakings not related to official duties. Here again the question arises whether the Agency would be violating the law in exerting control over these activities.

Section 1 (e) deals with psychological testing. S. 782 authorizes the Directors of the FBI, NSA and CIA, or their designees, on the basis of a personal finding in each individual case, to use such tests for the purpose of inquiring into the sensitive areas of religious beliefs and practices, personal family relationships, and sexual attitudes, but it denies the use of such testing to all other departments and agencies without regard to the fact that employees of these departments and agencies may be regular recipients of highly classified information.

Section 1 (f) establishes the same prohibition on the use of the polygraph test as applies to psychological testing, and grants the same partial exemption to the FBI, NSA and CIA. Again, the use of the polygraph test in the proscribed areas is denied to all but these three agencies, irrespective of the fact that highly sensitive positions may be involved.

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Section 1(k) poses a problem for the Agency in that it would appear to require the presence of counsel in behalf of an employee as soon as and at the very moment that a supervisor were to ask the employee the reasons for some suspected dereliction of duty ranging from a serious security violation to tardiness in reporting for duty or sloppy work habits. This provision goes to the very heart of the continuous process of review of intelligence operations and activities to determine their effectiveness, the quality of information derived, and professionalism in which the activities were conducted. Out of such interviews or postmortems there naturally evolves the review of individual employee performance which, if unsatisfactory, can readily result in disciplinary action. A great many extremely sensitive intelligence operations and activities are involved in this process and the presence of private counsel in behalf of an employee would raise most serious questions as to the appropriate control and protection of the intelligence information involved. There is no desire that an employee should be deprived of the right of counsel when appropriate, but the wording of this Section would make it "unlawful" to ask the simple preliminary questions which are necessary to establish whether or not there is some failure in performance or dereliction of duty unless provision is made for the presence of counsel if requested by the employee.

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Section 4 of the bill would permit any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the Act to bring civil action in the district courts. Communist or other subversives acting on their own or on instructions from foreign agents, could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews. A concerted effort of this nature could seriously impair the orderly recruitment process of the Agency. The will and ability of small minorities to interrupt the normal functioning of both public and private institutions has been amply demonstrated in recent months. There is little doubt that such groups would be quick to recognize and exploit the weapon provided by this Section of the bill.

Section 5. The comments made with respect to Section 4 above are only to a slightly lesser extent equally applicable to Section 5.

Section 6. This Section grants a partial exemption to the FBI, NSA and CIA with regard to financial disclosure and the use of psychological and polygraph testing by requiring each of the Directors, or their designees, to make a personal finding with regard to each individual case that such testing or financial

disclosure is required to protect the national security. If the Agency is to comply with the spirit of the law, it will still be necessary that a personal finding be made in each individual case that such testing or financial disclosure is required to protect the national security. Inquiry by these means into the proscribed areas, which are the key areas of vulnerability, will not be possible as a matter of general regulation.

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POINTS RE S. 782 - ERVIN BILL

The Agency has special problems in ensuring the loyalty, security consciousness, integrity and psychological stability of its employees:

a. Soviet and other hostile services assign overriding priority to penetrating U.S. intelligence organs by identifying and exploiting personal vulnerabilities and weaknesses of our personnel.

b. Such penetration can enable the enemy to identify and neutralize our own intelligence operations, learn what we know, and don't know, about enemy capabilities and intentions, provide insights enabling the enemy to confuse and deceive us, and provide extremely useful information to the enemy about U.S. national policy, diplomatic tactics and military capabilities, technology, etc., with which Agency personnel often become familiar in the course of their routine work.

c. Intelligence personnel are not only an attractive target for the enemy, but in many respects a particularly accessible one. Unlike members of most government organizations ~~—FBI, military or diplomatic—~~ intelligence personnel often must carry out their demanding and sometimes dangerous assignments completely alone and in hostile areas. They are thus subject to severe psychological pressure. They are far removed from immediate supervision,

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or even observation by friendly colleagues. In these circumstances any latent vulnerabilities and instabilities in their character or loyalty may come to the surface and be detected and exploited by an ever alert enemy.

d. In such circumstances we can neither observe nor assist our personnel in their day-to-day work. The only protection against the above-noted hazards is to be sure that we pick the right man for the job by employing the best possible assessment and evaluation techniques.

e. We think this is essential not only to protect the interests of the Agency and the Government, but that of the individual as well. Many people, through no fault of their own, are subject to latent weaknesses and vulnerabilities and we believe it would be a great disservice to them to impose upon them burdens for which they are unfitted, perhaps leading to most unfortunate consequences for them as well as for the Agency.

2. Hence, we have over the years, with the best professional advice available, devised a number of medical and psychological tests designed to ensure against assigning the wrong job to the wrong man. In a sense these tests may be compared with the thorough assessments employed in the selection of astronauts--too much is at stake to take any chances with avoidable human error or weakness.

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3. In the past there have been all too many cases where sensitive agencies of both the U.S. and other free world governments have suffered massive damage precisely because latent human weaknesses of individuals in key positions were detected and exploited by our enemies: several NSA cases a few years back damaged beyond calculation the effectiveness of that agency; the British Intelligence Service has still not recovered from the effects of the Blake, Philby and Lonsdale cases; the Germans, French and Swedes have had similar experiences; and at this moment a massive investigation is taking place in Brussels to determine the damage done to NATO security by the Imre case.

4. In view of the foregoing, we are troubled by several specific provisions of the Ervin bill, which we believe would seriously impair our ability to maintain the standards of security and integrity which we think essential in the discharge of our responsibilities. (here pick up points contained in pages 3 through 6 of letter of 25 September 1967 to Chairmen Rivers and Mahon)

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