

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

DDI-1147-73

Honorable John C. Stennis, Chairman
Committee on Armed Services
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request of 8 June 1973 for the recommendations of this Agency on S. 1935, "To amend section 102 of the National Security Act of 1947 to prohibit certain activities by the Central Intelligence Agency and to limit certain other activities by such Agency."

In view of the nature of our comments with respect to certain provisions of the bill, ~~we have classified this report, Secret.~~ *has been classified.*

S. 1935 adds a new subsection to section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403), which, according to the statement accompanying the introduction of the bill, modifies the authority of the National Security Council to proscribe certain functions for this Agency in the areas of: (1) internal security, (2) illegal domestic activities, and (3) "covert action" abroad. (119 CONG. REC. Daily Ed. 4 June 1973.)

Internal-Security Functions

The provisions of S. 1935 relating to internal-security functions appear in new subsection (g)(1)(A) and (B). According to the statement accompanying the introduction of the bill, the proposed subsection is designed to tighten up an existing provision of law:

"PROVIDED, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions." (National Security Act of 1947, section 102 (d)(3).)

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According to the statement, this tightening up is needed because the law prescribes other duties for CIA which justify "operations domestically" and "even domestic operations."

It is believed that a review of the language and background of the law establishes that:

(a) The word "powers" in the phrase "police, subpoena, law-enforcement powers" means legal ability or authority. The Agency has no police, subpoena, or law-enforcement powers, has never attempted to exercise such powers, and its legal inability and lack of authority to exercise such powers is abundantly clear.

(b) The meaning of the phrase "internal-security functions" is equally clear when considered in the context of both the legislation in which it appears and the legislative history which surrounds it.

The heart of the Central Intelligence Agency section of the National Security Act of 1947 is subsection 102(d) which sets forth the duties of the Agency under the direction of the National Security Council. The proviso in question appears in a paragraph of a subsection dealing specifically with the correlation, evaluation, and dissemination of intelligence information.

The legislative history of section 102 of the National Security Act reflects congressional intent that there be no confusion between the pursuit of intelligence abroad and police powers at home. In 1947, it was very clear that the merging of these two functions was characteristic of totalitarian states. The concern simply put was that there be no "gestapo in the United States." While this country has never had a national police force, experience with the conduct of totalitarian states was uppermost in the nation's mind.

In light of these concerns, a proviso was written into law to add to the assurance that the Agency would not be engaged domestically in collecting information on citizens of the United States who, unlike Agency employees and others having access to our information, are not of legitimate interest to the Agency. The proviso was patterned after the wording

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in paragraph 4 of the 22 January 1946 Presidential directive which established the Central Intelligence Group, the predecessor organization of the Central Intelligence Agency (i. e., "4. No police, law-enforcement, or internal-security functions shall be exercised under this directive.").

We do not view any provision in 102(d) as authority to override the proscription that the CIA shall have no police, subpoena, law-enforcement powers, or internal-security functions. However, neither do we view that proscription as prohibiting this Agency from protecting its installations in the United States, conducting security investigations of its personnel and persons having a need for access to its information, and, of course, engaging in activities in the United States solely in support of the Agency's foreign intelligence mission.

The functions assigned to this Agency under subsection 102(d) relate only to foreign intelligence activities although the word "foreign" does not appear in the subsection. While it is not believed that any amendment is necessary, the insertion of the word "foreign" appropriately throughout the subsection would be preferable to (g)(1)(A) and (B) of S.1935 and would appear to substantially meet the same objectives. With the word inserted, the introduction of subsection 102(d) would read as follows:

"For the purpose of coordinating the foreign intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council...."

New subsection (g)(1)(B) proposed in S.1935 would prohibit this Agency from providing assistance of any kind to any agency of the Federal or local government engaged in police, law-enforcement, or internal-security operations and activities unless such assistance is provided with the prior approval of the CIA oversight committees of the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives.

In carrying out its foreign intelligence function, the Agency frequently develops information of major concern to domestic law-enforcement agencies. In such areas as narcotics smuggling, aerial hijacking, international terrorism, and, of course, foreign directed espionage and subversion, the Agency has a capability, and we think an obligation, to provide information which this Agency acquires abroad in

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carrying out its foreign intelligence mission to those domestic agencies who alone might be in a position to use it effectively to forestall serious criminal action or security threats within the United States.

Illegal Domestic Activities

New subsection (g)(1)(C) proposed in S. 1935 would preclude this Agency from engaging in "any illegal activity within the United States." We see no merit in a proposed law forbidding this Agency from doing what it is already forbidden to do under the law of the land. Moreover, the very enactment of such a law would suggest, where there is no foundation in fact, that the Agency has conducted illegal activities in the past. ~~Finally, the enactment of the provision could be interpreted as legally condoning such activities if they occurred prior to the provision's enactment.~~

"Covert Action" Abroad

New subsection (g)(1)(D) proposed in S. 1935 would prohibit this Agency from engaging in "covert action" abroad without the specific written approval of the oversight committees of CIA in the Congress. While the new subsection is proposed as a tightening up of the current law, it actually constitutes a specific authorization for the CIA to engage in "covert action in any foreign country." It is believed that a statutory acknowledgement that the United States engages, or will engage, in covert action against foreign nations, contrary to the United Nations Charter and principles of international law, could be a cause for embarrassment in our international relations. The present practice of providing a full and complete account of our activities to our four oversight committees appears to be a more satisfactory method for meeting the objectives of the proposed new subsection.

In view of the above considerations, it is recommended that S. 1935 in its present form not be favorably acted upon by your Committee. The Office of Management and Budget advises that there is no objection to the submission of this report; that serious constitutional questions are raised by those provisions in the bill imposing a condition of prior approval by congressional committees; and that the enactment of S. 1935 in its present form would not be consistent with the Administration's objectives.

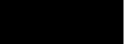
Sincerely,

W. E. Colby

~~SECRET~~

5 Sept. 73

STATINTL

 DDM&S called
re Proxmire bill, S. 1935:

They have no suggestions
other than the classification
may be too high; D/Security
suggested "Confidential"

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	[REDACTED], Acting		
2	Legislative Counsel		
3			
4			

Remarks:

The DDI has no problem with the intent of any of the statements in the draft letter. He does have problems with some of the wording however. Specifically, he believes that the final sentence in the paragraph on page 4 discussing new subsection (g) (1) (C) should be deleted. The DDI believes the sentence is a good point of law, but does not believe that it's an appropriate response for this letter.

In the very last paragraph, we believe you should make it clear that the very last phrase is OMB's position, not the Agency's.

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE
[REDACTED] C/Executive Staff/DDI	8.31.73

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STATINTL

11 Sept. 73

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JMM:

Attached for your review is our proposed report on the Proxmire bill. It has been coordinated fully within the Agency and reviewed by Woolsey also.

If you approve, we will put in final for Colby's signature prior to transmittal to OMB for clearance.

n

LLM

25 September 1973

Approved For Release 2001/08/30 : CIA-RDP75B00380R000500400008-9

STATINTL

Called DDS&T - [REDACTED] secretary - Sue
to find out if they ever responded to our request
for comments on Proxmire Bill. [REDACTED]
called later in the day to say that he was sorry
that he did not mail back his comments, but that
he (DDS&T) had no objections.

STATINTL

Approved For Release 2001/08/30 : CIA-RDP75B00380R000500400008-9

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: 
Acting Legislative Counsel

EXTENSION NO. OLC 73-0692
DATE 30 August 1973 25X1A

TO: (Officer designation, room number, and building)

DATE RECEIVED FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Attached for coordination is a proposed Agency report on S. 1935 (the Proxmire bill) which will be recommended to Mr. Colby for signature and will be submitted to the Office of Management and Budget for clearance prior to transmittal to the Senate Armed Services Committee, which has requested our views on the legislation.

Included in the attachments for your information is the statement by Proxmire which he made in connection with the introduction of the bill.


Acting Legislative Counsel

OGG BDO DDI DDM&S, DDS&T, IC

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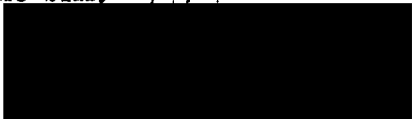
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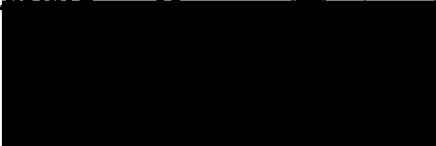
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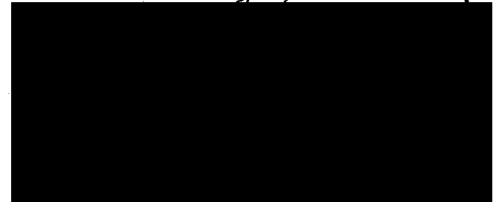
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Acting Legislative Counsel

1-2

Concur




25X1A


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3.	<i>DDO</i>	<i>8/30</i>	<i>8/31</i>	<i>Y</i>
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Included in the attachments for your information is the statement by Proxmire which he made in connection with the introduction of the bill.



Acting Legislative Counsel

1-3 Recommend you sign below. JHB

3 to 5:

DDO concurs in your proposed report (attached) on S. 1935,



William E. Nelson

DDO, DDI, DDM&S, DDS&T, IC