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Approved For Release 2003/12/03 : CIA-RDP75B00380R000500400009-8

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

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patterned after the wording 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.

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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 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 imply that the Agency has conducted illegal activities in the past.

"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.

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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
Director

Nationality Act specifically authorizes cooperation with the Immigration and Naturalization Service in transmitting biographic information on aliens who are coming into this country.

In the past we have afforded assistance to the Law Enforcement Assistance Administration and other agencies where we have developed techniques or equipment in the pursuit of our activities abroad where such techniques or equipment seem to have applicability in the law enforcement field. Two notable examples in this regard are the metal traces technique and the explosive handling techniques. These two were developed for use in Southeast Asia and clearly have applicability in the law enforcement field.

By Presidential direction, we have expanded our efforts in collecting intelligence in the narcotics area. The information we are able to develop abroad is passed to appropriate agencies such as BNDD and Customs. Generally, our assistance to law enforcement agencies is limited to information. In the case of the Secret Service, however, there is a specific law authorizing the Secret Service to request assistance of other Federal agencies in carrying out its duties. (P. L. 90-331, 18 U. S. C. A. 3056nt) When called upon the Agency has

assisted in augmenting Secret Service capabilities by detailing employees to the Secret Service for the duration of their performance of duties for the Secret Service.

I would intend to limit our assistance to conform with our basic statute and not participate actively in any way with the various law enforcement agencies in performance of their functions.

Comments on Proxmire (and Harrington) Bill

The bill amends the National Security Act of 1947 by providing that nothing in this or any other act should authorize the Agency to:

(a) engage directly or indirectly, or in conjunction with any other agency or individual, in any law-enforcement or internal-security activity;

(b) assist directly or indirectly any Federal, State, or local agency in any police, law-enforcement or internal-security actions within the United States unless approved in writing by our oversight committees;

(c) participate in any illegal activity in the United States;

(d) engage in any covert action abroad unless approved in writing by our oversight committees.

Section 102(d) of the National Security Act already forbids the Agency to engage in any "police, subpoena, law-enforcement powers or internal-security functions." The legislative history of the National Security Act makes clear that this provision was designed to ensure against the Agency's ever becoming a "gestapo" type organization. At no time has the Agency ever attempted to exercise any of these proscribed powers.

However, 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 to domestic agencies through appropriate channels information which this Agency acquires abroad in carrying out its foreign intelligence mission.

The bill in question would appear to prohibit the communication of information of this kind to Federal, State or local authorities who alone might be in a position to use it effectively to forestall serious criminal action or security threats within the United States.

The bill also creates a serious constitutional problem by providing that any assistance given to domestic law-enforcement agencies, and any covert action conducted abroad, be undertaken only with the prior written approval of our congressional oversight committees. Among the problems this creates are:

(a) explicit statutory recognition that the United States is involved in covert action which on its face is a violation of international law;

(b) violence to the principle of separation of powers by requiring that the Legislative and Executive Branches share responsibility for executive action.

Finally, the bill contains what appears to be a completely superfluous provision that it shall be illegal for the Agency "to participate, directly or indirectly, in any illegal activity in the United States."

S. 1935
[Proxmire]
H. R. 8592
[Harrington]

Purpose: To amend Section 102 of the National Security Act of 1947 to prohibit certain activities by the CIA and to limit certain other Agency activities

Comment:

S. 1935 and companion bill H. R. 8592 add a new subsection to 102 of the National Security Act of 1947 to specifically preclude CIA from engaging in any internal security or police activities directly or indirectly, any "illegal" activities within the U. S. , or to engage in any covert action abroad unless approved in writing by the CIA oversight subcommittees of House and Senate Appropriations and Armed Services Committees.

Position:

By letter to the Director dated 8 June, Chairman Stennis requested Agency views on S. 1935. Chairman Hebert, House Armed Services Committee, by letter to General Walters dated 13 June, requested the views and recommendations of CIA on H. R. 8592. The Agency's position was coordinated with OGC, all Deputy Directorates, and the IC.

A proposed reply to Chairman Stennis on S. 1935 was circulated for comment and coordination on 30 August. The proposed reply recommended that S. 1935 not be favorably acted upon. The proscription against the Agency's involvement in law enforcement activities was considered adequately covered in our present law. This provision in the bill was considered so broadly stated that it would preclude CIA from providing information to law enforcement agencies, both Federal and State, in foreign intelligence matters which are of direct concern to law enforcement agencies. This would include areas as narcotics smuggling, high jacking, terrorism, and all aspects of foreign directed espionage and subversion. The proscription against "illegal" activities by CIA was considered of no merit since CIA is already forbidden from doing anything illegal. The amendment to require the written approval of CIA's oversight committees before the Agency conducts any "covert action" abroad is considered to be contrary to international law and could cause embarrassment in international relations since it constitutes a specific authorization for CIA to engage in covert action in any foreign country.

IC, OGC and DDO concurred. The DDI recommended deletion of the statement in the draft that a statutory acknowledgement that the U. S. engages in covert action against foreign nations was contrary to the principle of international law.

On 16 July Mr. Colby met with Chairman Hebert and they discussed the Proxmire/Harrington bill. Chairman Hebert said not to be concerned about the bills as the matter of revising the Agency's charter is before his committee and would be brought into a proper point of discussion at the right time. Mr. Colby at that time raised the same points as are contained in the written response to Chairman Stennis on S. 1935.

The reply to Chairman Hebert on H. R. 8592 consists of a copy of the Agency reply to Chairman Stennis since the two are companion bills.

Status:

S. 1935 was referred to the Senate Subcommittee on Armed Services on June 4. H. R. 8592 was referred to the House Committee on Armed Services on June 12.

Agency reply sent to OMB on 24 September.

4 Jan 74

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UNCLASSIFIED	CONFIDENTIAL		
OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1	Mr. Maury		
2			
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6			
	ACTION	DIRECT REPLY	PREPARE REPLY
	APPROVAL	DISPATCH	RECOMMENDATION
	COMMENT	FILE	RETURN
	CONCURRENCE	INFORMATION	SIGNATURE
Remarks:			
<p style="text-align: center;">The original of this went to Mr. Colby per his telephone request of me.</p> <div style="text-align: center; margin: 10px 0;"> <div style="border: 1px solid black; width: 150px; height: 40px; margin: 0 auto;"></div> <p style="margin: 0;"><i>John S. Warner</i></p> </div>			
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FROM: NAME, ADDRESS AND PHONE NO.			DATE
Acting General Counsel			6/28/73
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27 June 1973

CIA relationships with other agencies of Government cover a wide spectrum. With the other agencies of the intelligence community there is widespread two-way cooperation and assistance in the fields of information, techniques and equipment. There are also exchanges of personnel and detailing of personnel from one agency to another.

In the area of Agency relationships with law enforcement agencies of the Federal Government, we are at all times guided by the prohibitions of section 102(d)(3) of the National Security Act, "That the Agency shall have no police, subpoena, law-enforcement powers or internal-security functions." We have never exercised or attempted to exercise any police, subpoena or law enforcement powers. When the Agency comes into possession of information of interest to law enforcement agencies as a result of its foreign intelligence collection activities, we routinely pass such information to the interested agency. Additionally, where by virtue of the investigation of our own employees we have accumulated considerable biographic data, this is also routinely made available upon request. Section 105 of the Immigration and

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ROUTING AND RECORD SHEET

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SUBJECT: (Optional)

FROM:

John M. Maury
Legislative Counsel

EXTENSION

NO.

OLC 73-0692

DATE

17 September 1973

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

DATE

OFFICER'S INITIALS

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

1.

Mr. Evans

19 Sep

[Handwritten initials]

2.

3.

Mr. Colby

9/19 9/21

[Handwritten initials]

Attached for Mr. Colby's signature is a proposed Agency report on S. 1935 (the Proxmire Bill) which will be submitted to OMB for clearance prior to transmittal to the Senate Armed Services Committee which requested our views.

4.

OGC, DDO, DDI, DDM&S, DDS&T, and IC have concurred in the report and it has been reviewed informally by Jim Woolsey, General Counsel of the Senate Armed Services Committee.

5.

[Handwritten initials]

6.

7.

Also attached for Mr. Colby's signature is a report to Chairman Hebert on a companion bill introduced by Harrington (D., Mass.) In this case we recommend submitting to Hebert our report on the Senate bill with a short covering letter. The language of the bill is vague, particularly with respect to covert action and Harrington, unlike Proxmire, did not insert a statement in the record explaining the bill to which we could key our comments. (Slatinshek, of the Committee Staff, agrees with this approach.)

8.

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STATINTL

14.

JOHN M. MAURY
Legislative Counsel

15.

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WASHINGTON, D.C. 20505

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, this report has been classified Confidential.

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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