

LLM:UHC

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8. What is CIA official position on S. 1935?

These views have not been cleared with the Office of Management and Budget.

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

S. 1935 adds a new subsection to section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403), <sup>which, according to the</sup> ~~Based upon the~~ <sup>accompanying</sup> ~~language of the bill and the sponsor's statement when it was introduced,~~ <sup>the</sup> ~~the purpose of the bill is to modify~~ the authority of the National Security Council to proscribe certain functions for this Agency in ~~three~~ <sup>two</sup> areas: (1) internal security ~~functions~~, (2) illegal domestic activities, and (3) "covert action" abroad. *(cite 4 June Gen. Row + page)*

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Internal Security Functions

The provisions of the <sup>51935</sup> bill relating to internal security functions

appear in new subsection (g)(1)(A) and (B). According to the sponsor's statement in introducing the legislation on 4 June 1973, these provisions <sup>are meant to</sup> tighten up the first proviso in subsection 102(d)(3) of the National Security Act of 1947 <sup>that the CIA shall have no</sup> "police, subpoena, law-enforcement powers, or internal-security functions." <sup>(Sec. 102(d)(3), NSA 1947)</sup> The sponsor

~~views the phrase "internal security functions" as a "blanket disapproval for any active domestic police-type functions."~~ <sup>because</sup> His stated concern is that ~~other provisions in the CIA section of the National Security Act of 1947 can be cited for justifying "operations domestically" and "even domestic operations."~~ <sup>law press has other</sup> ~~In light of this stated concern, it is important to review the meaning of the proviso in question.~~ <sup>in law</sup>

(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.

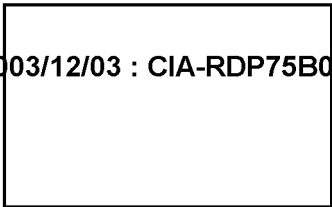
The heart of the Central Intelligence Agency section of the National Security Act of 1947 is subsection 102(d) which sets forth the duties of the Agency under the direction of the National Security Council. The proviso appears in ~~that~~ paragraph of ~~that~~ subsection which deals specifically with 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 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 <sup>provision in</sup> ~~of the subsections~~ of 102(d) as authority to override the proscriptions ~~in the proviso~~ that the CIA shall have no police, subpoena, law enforcement powers, or internal security functions. However, neither do we view that  ILLEGIB proviso 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 ~~to~~ support the Agency's foreign intelligence mission.

~~It is our view that~~ the functions ~~that can be~~ assigned to this Agency under subsection 102(d) are limited to foreign intelligence activities even though the word "foreign" is absent from the subsection. The insertion



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of the word "foreign" in the subsection would be preferable to

(g)(1)(A) and (B) of S. 1935 and would appear to substantially meet

the ~~sponsor's~~ objectives. <sup>the bill.</sup> With the word inserted, <sup>the introduction of</sup> subsection 102(d)

would read as follows:

<sup>4</sup> 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.... "

An alternative to inserting the word "foreign" in subsection 102(d)

would be to amend S. 1935 to read as follows:

<sup>insert</sup> "(g) <sup>Keep</sup> Nothing ~~in this or any other Act~~ shall be construed as authorizing the Central Intelligence Agency to--

"(A) <sup>engage</sup> ~~carry out~~, directly or indirectly, within the United States, either on its own or in cooperation or conjunction with any other department, agency, organization, or individual any police or police-type operation or activity, any law enforcement operation or activity, or any internal security operation or activity: Provided, however, that nothing in this Act shall be construed to prohibit the Central Intelligence Agency from protecting its installations or conducting personnel investigations <sup>of Agency employees</sup> related to performance

~~of its mission; nor from carrying on within the United States activities~~

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in support of its foreign intelligence responsibilities other than police, law enforcement or internal security activities;

*New subsection proposed - S 1935 would prohibit this type from*  
(g)(1)(B) provides that CIA shall not provide 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

Subcommittees of the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives.

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*Such*  
[redacted]  
requirement by approval of the Committees of Congress raises serious constitutional questions.

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 highjacking, 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

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mission:

[redacted]

Illegal Domestic Activities

*in S 1935*  
The provision of the bill relating to illegal domestic activities appears in subsection (g) (1) (C). *proposed - S 1935* This provision would preclude the

highjacking, 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 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 the CIA in Congress. The requirement of prior approval of ~~committees of Congress~~ raises a serious constitutional question. While it is proposed as a tightening up of current law, it actually constitutes a specific authorization for the CIA to engage in "covert action in any foreign country." ~~This constitutes~~ 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, and could be a cause for embarrassment in our international relations.

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~~It would appear that our present full and complete accounting of our activities to our four oversight committees meets the objective of this proposed revision.~~

*in a past form*

it is recommended that the

In view of the above considerations, ~~I believe that enactment of proposals in S.1935~~ 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 and that enactment of S.1935 in its present form would not be consistent with the Administration's objectives.

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Agency from engaging in "any illegal activity within the United States."

*we* This Agency sees *approved* no merit in ~~passing a law~~ forbidding this Agency from

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doing what it is already forbidden to do under the law of the land. More-

over, the very enactment of such a law would suggest that the Agency

has conducted ~~such~~ illegal activities in the past. ~~This suggestion~~

~~has no foundation in fact.~~ *Further?* the enactment of the provision could

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be interpreted as legally condoning such activities if they occurred prior

to the provision's enactment.

"Covert Action" Abroad

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The provision of the bill relating to "covert action" abroad appears

in new subsection (g)(1)(D) *of* While it is proposed as a tightening up of

current law, it actually constitutes a specific authorization for the CIA

~~under the direction of the National Security Council to engage in "covert~~

action in any foreign country" with the specific written approval of the

oversight committees of the CIA in the Congress. The requirement of

prior approval of committees of Congress raises serious constitutional

questions. ~~Further, this constitutes a statutory acknowledgement that~~

the United States, engages *or will engage* in covert action against foreign nations. ~~Thus,~~

in addition to a constitutional question, the section could be construed as

contrary to the United Nations Charter and principles of international law

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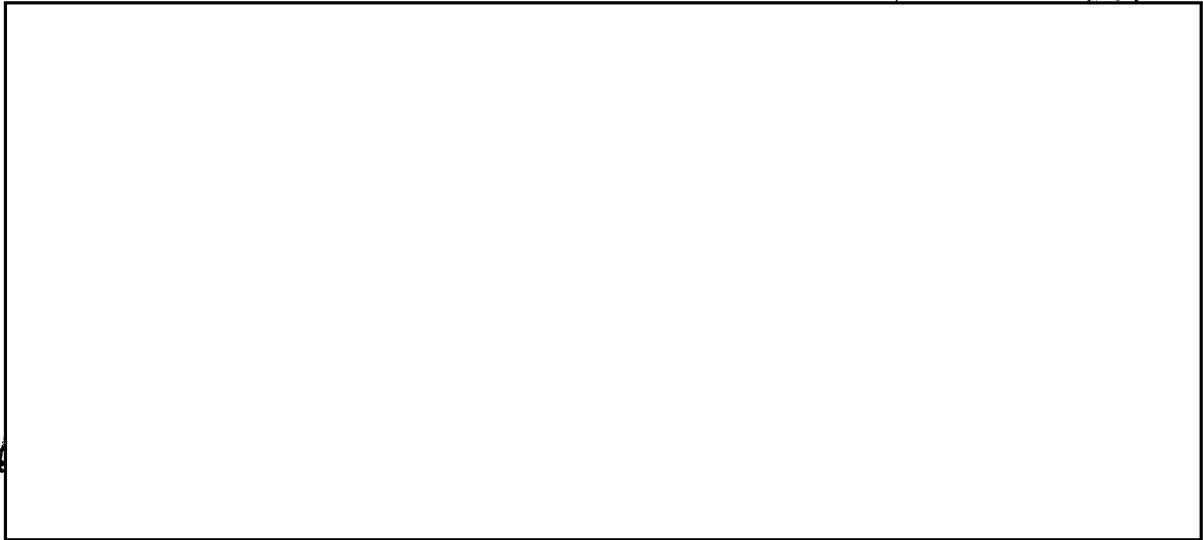
and could be a cause for embarrassment in our international relations,

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In view of the above, it is recommended that S. 1935 not be favorably acted upon by your Committee. — *S* —

[Redacted]

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