

VII. THE CENTRAL INTELLIGENCE AGENCY: STATUTORY AUTHORITY

The National Security Act of 1947 provides the Central Intelligence Agency with statutory authority for its activities. Section 102(d) of that Act lists the following "powers and duties" for the Agency:

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: *Provided*, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: *Provided further*, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: *And provided further*, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.¹

The CIA has engaged in the following three types of activities, none of which is specifically mentioned in the 1947 legislation: (1) direct clandestine collection of intelligence; (2) covert action; and (3) direct collection of information regarding the activities of American nationals within the United States. As the fact of CIA involvement in these activities has become widely known, questions have been raised regarding the statutory authority by which the Agency undertook these responsibilities.

It is important to note at this point that the confusion which has resulted from the lack of specific legislative guidelines with respect to these three kinds of activities must rest with Congress. The language of the National Security Act, its legislative history, and the post-enactment interpretation of the legislation by Congress itself indicates that the Act can legitimately be construed as authorizing clandestine collection by the CIA. The Select Committee's record shows that the legislating committees of the House and Senate intended for the Act to authorize the Agency to engage in espionage. This activity could and should have been specifically authorized in the 1949 legislation.

¹ 50 U.S.C. 403(d).

Authority for covert action cannot be found in the National Security Act. The Committee finds that the executive branch should have approached Congress for authority for the CIA to engage in such activities, particularly where they involved the use of force. At the same time, Congress should have acted in response to well-publicized instances of covert action to clarify CIA authority in this area.

Finally, Congress did take decisive action in the National Security Act of 1947 to prevent the CIA's assuming any police, law-enforcement, or internal security function in the United States. Some of the CIA's activities have been in clear violation of that principle. Congress now has a responsibility, however, to clarify the Agency's authority where CIA's domestic activities are directly linked to its foreign intelligence responsibilities.

A. CLANDESTINE COLLECTION OF INTELLIGENCE

While the National Security Act of 1947 authorizes correlation, evaluation, and dissemination of national security intelligence by the CIA, nowhere does it specify that the Agency is authorized to engage in the direct collection of intelligence. As its authority to engage in direct collection, the CIA has relied upon Section 102(d) (4) and (5) of the Act,^{1a} which authorizes the Agency:

(4) to perform, for the benefit of the existing agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct. 50 U.S.C. 403 (d) (4) and (5).

The legislative history of the 1947 Act does not indicate clearly that the full Congress specifically intended by these provisions to authorize direct clandestine collection by the CIA. The legislating committees discussed the issue in some detail in executive session, but it was mentioned only briefly in public hearings and floor debates. However, the public record does suggest that the full Congress had access to information which indicated that the Act could be construed as authorizing direct collection. No action was taken to prohibit such activity. Moreover, the 1949 enactment of the Central Intelligence Agency Act demonstrates congressional intent to facilitate clandestine activities, and thus congressional endorsement of the view that such activities were the legitimate function of the CIA.

The Committee has been able to locate full records for only one of the closed committee meetings on the National Security Act. In a transcript of the June 27, 1947 meeting of the House Committee on Expenditures in the Executive Departments, executive branch representatives proposed centralization of clandestine collection in the CIA. The Committee discussed the wisdom of this proposal with a number of

^{1a} Memorandum from the CIA General Counsel to the Director, 5/7/48: memorandum from the CIA General Counsel to the Deputy Chief for Foreign Intelligence, 4/14/61.

witnesses.² General Hoyt S. Vandenberg, then Director of Central Intelligence, suggested centralized collection to the Senate Committee on the Armed Services,³ and other executive branch personnel who participated in the preparation of the Act have stated that the Senate committee discussed the proposal.⁴ In addition, a 1961 memorandum by CIA General Counsel Lawrence Houston and recent interviews with Houston and former CIA Legislative Counsel Walter Pforzheimer indicate that the possibility of including language in the Act specifically to authorize espionage by the CIA was discussed.⁵ According to Houston and Pforzheimer, this proposal was rejected on the grounds that it would be inappropriate for the United States to be on record as a participant in this kind of activity.⁶

The House Committee was informed that the Central Intelligence Group, the predecessor agency to the CIA, had engaged in clandestine collection, and that it relied for its authority upon language in subsections 3 (c) and (d) of the Presidential Directive of January 22, 1946 establishing the CIG.⁷ The Committee was therefore specifically on notice that this language, which is almost identical to Section 102(d) (4) and (5) of the National Security Act of 1947, had been considered sufficiently broad to authorize direct clandestine collection. (The Presidential Directive, like the 1947 Act, does not mention collection of any kind.)

Committee reports on the National Security Act make no reference to a collection role for the CIA. In open committee hearings very little was said about the issue. Occasional remarks do indicate, however, that the Agency would perform some kind of collection function. In testimony before the Senate Armed Services Committee, General Vandenberg said that the CIA would collect "foreign intelligence information of certain types."⁸ Earlier in his testimony General Vandenberg had referred to "certain . . . activities" which intelligence agencies such as the CIA, military intelligence, and the FBI could not "expose . . . to the public gaze."⁹ General Vandenberg had spoken with some specificity of the need for centralizing clandestine collections in the CIA before both the House and Senate Committees in closed session. It can be assumed that these additional remarks, which were released to the public, referred to clandestine collection as well.

² Transcript, House Committee on Expenditures in the Executive Departments, Hearings on H.R. 2319, 6/27/47 (hereinafter cited as House transcript), pp. 10-19, 53-55, 79-86, 111-112, 118-125, 134-135, 159-164.

³ Testimony of General Hoyt S. Vandenberg, Director of Central Intelligence (sanitized, now declassified), Senate Armed Services Committee, Hearings on S. 758, 4/29/47.

⁴ Staff summary of Walter Pforzheimer, former CIA Legislative Counsel, interview, 3/4/76.

⁵ Memorandum from the CIA General Counsel to the Deputy Chief for Foreign Intelligence, 4/14/61; staff summary of Lawrence Houston interview, 6/4/75; staff summary of Walter Pforzheimer interview, 5/20/75.

No discussion of such a proposal is reported in the public record, but the House committee executive session transcript contains brief references to it. Allen Dulles testimony, House transcript, p. 59.

⁶ Houston (staff summary), 6/4/75.

⁷ General Hoyt S. Vandenberg testimony, Peter Vischer testimony. House transcript, pp. 10, 76.

⁸ Vandenberg, Senate Armed Services Committee, Hearings, 4/29/47, p. 496.

⁹ *Ibid.*, (p. 492).

Little more was said in public. During the House floor debates, Rep. Busbey, a member of the Committee on Expenditures, expressed objection to clandestine collection by the CIA and said he hoped the bill would be amended to prohibit such activity.¹⁰ No such amendment was adopted, however, and Rep. Holifield, another member of the committee, later remarked:

I want to impress upon the minds of the Members that the work of this Central Intelligence Agency, as far as the collection of evidence is concerned, is strictly in the field of secret foreign intelligence—what is known as clandestine intelligence.¹¹

The remarks of Representatives Busbey and Holifield indicate that it was anticipated that the authority conveyed by the bill extended to clandestine collection by the CIA. Still later in the floor debate, however, Rep. Patterson stated that while he clearly wanted “an independent intelligence agency, working without direction by our armed services, with full authority in operational procedures,” he knew that it was “impossible to incorporate such broad authority in the bill now before us.”¹² Rep. Patterson may have been expressing regret that the National Security Act did not authorize the CIA to engage in direct collection of intelligence; he may have been expressing the view that the Act would not give the CIA full independence in its operations from the armed services; or he may have been referring to what we now describe as covert action.

Public references to collection are too obscure and in some cases too ambiguous for the inference to be drawn that the full Congress specifically intended to authorize direct collection by the CIA. It would require an attentive legislator, alert to the full record, to be apprised of the possibility of CIA participation in this activity through the public hearings and debates. But the language of Section 102(d) (4) and (5) indicates that the Congress intended some flexibility in the operations of the CIA. These provisions are sufficiently broad that clandestine collection of information could reasonably fall within the range of activities which they describe. There is no substantial evidence that Congress intended specifically to exclude clandestine collection from the “services of common concern . . . for the benefit of existing agencies” or from the “other functions and duties related to intelligence affecting the national security” which were authorized by the Act.

Two years after the enactment of the National Security Act, Congress passed the Central Intelligence Agency Act of 1949, 50 U.S.C. 403a–403j. The 1949 legislation was an enabling act; technically it contributed nothing to the kinds of activities which the Agency was authorized to carry out. Its enactment, however, sheds some light upon what Congress thought it had authorized in 1947.

There is no doubt that the purpose of certain provisions of the 1949 Act was to protect clandestine activities of the CIA. The Act waives the normal restrictions placed on government acquisition of materiel, hiring, and accounting for funds expended. If Congress did not be-

¹⁰ 93 Cong. Rec. 9404 (1947).

¹¹ *Ibid.*, p. 9430.

¹² *Ibid.*, p. 9447.

lieve that some type of clandestine activity had been authorized by the National Security Act, these provisions would not have been necessary.

Further, the Congress had reason to believe that the CIA was already engaged in espionage. Prior to passage of the Act, there had been discussion in the press of CIA involvement in direct clandestine collection.¹³ Clandestine collection was specifically discussed in closed hearings on the Act,¹⁴ and finally, in floor debates Members of Congress referred to the legislation as "an espionage bill."¹⁵ While there was much debate on the floor of both Houses as to the wisdom of specific provisions of the bill and the general need for secrecy in the enactment process, no one suggested that the provisions of the bill were unwarranted because the operations which they were designed to facilitate were not authorized by law.

The Central Intelligence Agency Act appears to represent congressional endorsement of the view that the National Security Act had authorized the CIA to engage in direct clandestine collection. That is a view consistent with the language of the National Security Act and, to the degree that the history addresses the issue, with its legislative history.

B. COVERT ACTION

Covert action is defined as clandestine activity designed to influence foreign governments, events, organizations or persons in support of U.S. foreign policy conducted in such a way that the involvement of the U.S. Government is not apparent. In its attempts directly to influence events it is distinguishable from clandestine intelligence gathering—often referred to as espionage. It has been argued that authority for the CIA to conduct covert action can be found in the 1947 National Security Act, the 1949 Central Intelligence Agency Act and the post enactment interpretation of those acts by the Congress and the Executive.

The National Security Act contains no reference to covert action. Section 102(d) (5) of the Act has been cited, however, as the statutory basis for covert action. That paragraph provides that the Agency shall "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may, from time to time, direct." Paragraph 5 was cited by the National Security Council in authorizing covert action by the CIA in NSC-4-A and NSC 10/2.

The language of 50 U.S.C. 403(d) (5) may in fact authorize a broad range of activities not otherwise specified in the Act. An important limitation on such authorization, however, is that the activities must be "related to intelligence affecting the national security." Many covert actions are "related to intelligence" in the sense that their performance is tied to clandestine intelligence operations, uses the same meth-

¹³ "The X at Bogota," *The Washington Post*, 4/13/48; Hanson W. Baldwin, "Intelligence—II," *The New York Times*, 7/22/48.

¹⁴ Gen. Hoyt S. Vandenberg testimony, House Armed Services Committee Hearing on H.R. 5871, 4/8/48. (The CIA Act was not passed by the 80th Congress in 1948, but the same bill reported by the House Armed Services Committee in 1948 was enacted by the 81st Congress in 1949.)

¹⁵ 95 Cong. Rec. 1946, 1947 (1949).

ods, and yields an intelligence product. It must be noted, however, that the chief purpose of these operations is not to gather intelligence, and that many covert actions, such as the invasion of the Bay of Pigs, have only the most limited relationship to "intelligence affecting the national security."

Given the fact that some of the actions which the CIA has taken to influence events in other countries are arguably "related to intelligence affecting the national security", again it may be useful to examine the legislative history of the National Security Act to determine if these forms of covert action were within the range of activities which Congress intended to authorize. But there is little in the public record or even in the House Committee's executive session transcript which sheds any light on the intent of Congress with respect to covert action. Occasional references were made to "operational activities",¹⁶ "special operations,"¹⁷ or "operational procedures,"¹⁸ but the context of these remarks indicates that they were at least as likely to refer to the clandestine collection of intelligence as to covert action. In any case, these terms were never used in such a way as to indicate clearly that the Congress intended to authorize the activities which they encompassed. A memorandum by the CIA's general counsel, written soon after the passage of the Act, concedes that the legislative history contains nothing to show that Congress intended to authorize covert action by the CIA.¹⁹

Neither the 1947 Act nor its legislative history, however, indicates congressional intent to prohibit covert actions by the Agency. As previously noted, the Executive had intended from the outset that the CIA would engage in clandestine collection of intelligence. The flexibility which 50 U.S.C. 403(d)(5) conveyed to the Agency, together with the capacity to act in secret which was being developed in connection with its clandestine collection function, made the CIA an attractive candidate to carry out these additional sensitive operations. The executive branch was soon to seize upon this flexibility and assign major covert operations to the Agency.

In December 1947 the National Security Council instructed the CIA to undertake covert psychological operations.²⁰ Six months later the NSC vastly expanded the range of covert activities authorized to include:

propaganda; economic warfare; preventive direct action, including sabotage, anti-sabotage, demolition and evacuation measures; subversion against hostile states, including assistance to guerrilla and refugee liberation groups, and support of indigenous anti-Communist elements in the threatened countries of the free world.²¹

Under the authority of 50 U.S.C. 403 (d) (5), there was established an Office of Special Projects to conduct covert actions.²²

¹⁶ James Forrestal testimony, House Committee on Expenditures in the Executive Departments. Hearings on H.R. 2319, 1947, p. 120.

¹⁷ Memorandum from Allen Dulles, 4/25/47, Senate Armed Services Committee. Hearings on S. 758, p. 529.

¹⁸ 93 Cong. Rec., 9447, 1947.

¹⁹ Memorandum from the CIA General Counsel to the Director, 9/25/47.

²⁰ NSC-4-A, 12/17/47.

²¹ NSC Directive, 6/18/48.

²² *Ibid.*

All of this occurred prior to enactment of the Central Intelligence Agency Act in 1949. As noted previously, the CIA Act included provisions the clear purpose of which was to protect the security of secret operations. What is not clear is whether these operations were meant by the Congress to include covert action as we now understand the term.

By 1948 the CIA was already engaged in a variety of covert actions. In seeking passage of the Central Intelligence Agency Act the Executive anticipated that its provisions would facilitate these operations, as well as covert collection. Remarks in executive session of the House Committee on Armed Services indicate that such operations were used to justify passage of the Act, and that this committee knew that plans for covert action were then pending, which the Act was necessary to implement.²³

There is no evidence that the full Congress, on the other hand, knew or understood the range of clandestine activities, including covert action, which the Executive was undertaking. The Committee reports on the bills that were to become the Central Intelligence Agency Act include no reference to covert action, and the floor debates do not indicate that the Congress knew that covert action, as opposed to clandestine intelligence gathering, was being or would be undertaken by the CIA.²⁴ Thus, while the very nature of some of the provisions of the 1949 Act indicates that the Congress assumed that the CIA would engage in some clandestine activities, and while the legislative history of that Act indicates that these operations were expected to include espionage, there is nothing in the legislation or its history to indicate that the full Congress meant by the Act to facilitate covert action.

It has been suggested that congressional provision of funds to the CIA indicates congressional approval of, or authorization for the CIA's conduct of covert action. Such a premise was offered in a 1962 internal memorandum of the Agency's General Counsel²⁵ and in a Justice Department memorandum dated two days later.²⁶ In December 1975 this argument was made publicly by the Special Counsel to the Director of the CIA in testimony before the House Select Committee on Intelligence. The Special Counsel said that given "CIA reporting of its covert action programs to Congress, and congressional appropriation of funds for such programs" the "law is clear that, under these circumstances, Congress has effectively ratified the authority of the CIA to plan and conduct covert action under the direction of the President and the National Security Council."²⁷

The principal problem with this analysis is that the CIA has not reported its covert action programs to Congress as a whole, but only

²³ Vandenberg, House Armed Services Committee Hearings on H.R. 5871, 4/8/48.

²⁴ It was remarked in the House debates, however, in the context of a discussion of intelligence gathering that "in spite of all our wealth and power and might we have been extremely weak in psychological warfare, notwithstanding the fact that an idea is perhaps the most powerful weapon on this earth." 95 Cong. Rec. 1947 (1949).

²⁵ Memorandum from the CIA General Counsel to the Director, 1/15/62, p. 2.

²⁶ Memorandum, Office of Legislative Counsel, Department of Justice, 1/17/62, pp. 12-13.

²⁷ Testimony of Mitchel Rogovin, Special Counsel to the Director of Central Intelligence, House Select Intelligence Committee Hearings, 12/9/75, pp. 1735-1736.

to a few members of a few committees of Congress. Small subcommittees of the Armed Services and Appropriations Committees in each House were briefed to some extent on these activities until 1974, when the Foreign Assistance Act was amended to require that six committees of Congress be informed with respect to those foreign activities of the CIA which are not intended solely for obtaining necessary intelligence.

Other members of Congress may ultimately have become generally aware that the CIA engaged in some non-intelligence production operations; the role of the CIA in the Bay of Pigs operation, for example, was widely known. Still it cannot be said that Congress as a whole, knowing that the Agency made a practice of covert actions, ratified such operations by appropriating funds for them. The Congress as a whole has never voted for appropriations for the CIA. The funds provided to the CIA are concealed in the appropriations made to other agencies, they are then transferred to the CIA, pursuant to the provisions of the CIA Act of 1949, with the approval of the OMB and selected members of the Appropriations Committees. Congress as a whole has known neither how much the CIA would receive nor where the funds which would be transferred to the CIA were concealed. A question has been raised as to whether the CIA is even "appropriated" funds pursuant to constitutional requirements.²⁸

More convincing than the argument that Congress has ratified covert action by appropriation is the suggestion that ratification has been by acquiescence. Although the Congress as a whole has not made appropriations for covert action, in recent years it has been aware that funds for such operations were being channeled to the CIA. Congress has had the power to put an end to these activities by attaching conditions to the use of funds appropriated by it. The failure to exercise this power may be interpreted as congressional ratification of CIA authority.

In December 1974 the Congress passed a set of amendments to the Foreign Assistance Act of 1961. Section 32 of these amendments, which became Section 662 of the 1961 Act and is known as the Hughes-Ryan Amendment, provides:

Limitations on intelligence activities.—(a) No funds appropriated under authority of this or any other act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives. (b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution. 22 U.S.C. 2422.

²⁸ Elliot Maxwell, "The CIA's Secret Funding and the Constitution," *Yale Law Journal*, Vol. 84 (1975), pp. 608-636.

The Hughes-Ryan Amendment was cited by the Special Counsel to the Director of the Central Intelligence Agency when he appeared before the House Select Committee on Intelligence to argue that Congress has "both acknowledged and ratified the authority of the CIA to plan and conduct covert action." He said that the provision "clearly implies that the CIA is authorized to plan and conduct covert action."²⁹

Section 32 does not explicitly authorize covert action by the Central Intelligence Agency. On its face it contributes nothing to the CIA's authority to do anything. It can be argued, however, that the amendment represents recognition by the Congress that authority for the CIA to engage in covert action does exist. This argument has considerable merit. While certain restrictions were placed upon the conduct of covert action, it was not foreclosed as it could have been. On the other hand, it can be argued that the amendment merely represents Congress' acknowledgement that the CIA does carry out non-intelligence production activities. The purpose of Section 32 was to acquire information about these operations so that a decision could be made about their legitimacy. This argument is bolstered by the fact that a number of the proponents of the amendment, including its sponsor in the Senate, saw the amendment as a temporary measure. Senator Hughes stated on the floor that the measure "provides a temporary arrangement, not a permanent one, recognizing that a permanent arrangement is in the process of being developed."³⁰ Thus the amendment might be seen not as congressional ratification of the CIA's authority to conduct covert action, but as a temporary measure to place limits on what the CIA was doing anyway. At the same time, the measure requires reporting so that Congress, traditionally deprived of information about covert action, can determine what further action to take with respect to this activity.

The significance of the events up to 1974 is that until that date Congress could escape a full share of responsibility for the CIA's covert actions. Enactment of the Hughes-Ryan Amendment, however, does represent formal acknowledgement by Congress that the CIA engages in operations in foreign countries for purposes other than obtaining intelligence. Since passage of that Act, six standing committees of Congress have received information on specific CIA covert actions, and public hearings have been held on the subject by the Select Committee. The full Congress now has information on covert action, and it has the power to prohibit or further restrict this activity, either directly or through limitations on the expenditure of funds. If Congress takes no such action, a convincing argument can be made that it has authorized covert action by acquiescence.

C. DOMESTIC ACTIVITIES

The record shows that the CIA has engaged in a variety of clandestine collection programs directed at the activities of Americans within the United States. Some of these activities have raised constitutional

²⁹ Rogovin, House Select Committee on Intelligence, Hearings, 12/9/75, p. 1737.

³⁰ Cong. Rec. S18062, daily ed., 10/2/74.

questions related to the rights of Americans to engage in political activity free from government surveillance. But they have also raised questions about (1) the authority of the CIA, under its charter, to collect and use information about Americans, and (2) the extent to which the specific statutory prohibition on police and internal security functions by the CIA restricts these domestic activities.

The National Security Act of 1947 defines the duties of the CIA in terms of "intelligence" or "intelligence relating to the national security." The legislative history of the Act clearly shows that Congress intended the activities authorized by this language to be related to foreign intelligence.³¹ This construction is aided by the statute's provision that "the Agency shall have no police, subpoena, law enforcement power, or internal-security functions," (50 U.S.C. 403(d)(3)). In recent years, however, the executive branch has interpreted foreign intelligence broadly to include intelligence programs the purpose of which is to determine foreign influence on dissident domestic groups. These programs have involved intelligence gathering within the United States directed at United States nationals. They have continued, under Presidential orders, even when no significant foreign connections were found. Even if these investigations had been based at the outset upon specific evidence of contact between domestic groups and hostile foreign governments or powers, however, and even if they had been terminated immediately when they revealed no foreign threat, a question arises as to whether such investigations would be authorized by the National Security Act.

The legislative history of the Act shows that in establishing the CIA Congress contemplated an agency which not only would be limited to foreign intelligence operations but one which would conduct very few of its operations within the United States. It was contemplated that the Agency would have its headquarters here,³² and in House Committee hearings in executive session the possibility of seeking foreign intelligence information from private American citizens who traveled abroad was discussed with approval.³³ But in public and in private it was generally agreed among legislators and representatives of the Executive that the CIA would be "confined out of the continental limits of the United States and in foreign fields,"³⁴ that it should

³¹ The purpose of the CIA was to take over the functions of the CIG, which had acted as a foreign intelligence agency. The assumption that the CIA would continue in the foreign intelligence field underlies much of the legislative debates over Section 102 of the National Security Act. For example, in the House floor debates it was remarked that, "The Central Intelligence Agency deals with intelligence outside the United States," [93 Cong. Rec. 9494 (1947)], that "the Central Intelligence Agency is supposed to operate only abroad" (*Ibid.*, p. 9448) and that "the Central Intelligence Agency deals only with external security" (*Ibid.*, p. 9447). It was frequently remarked that the Agency was not to be permitted to act as a domestic police or "Gestapo." [Senate Armed Services Committee, Hearings on S. 758, (1947), p. 497; House Expenditures in the Executive Departments Committee, Hearings on H.R. 2319 (1947), pp. 127, 438, 479-481; 93 Cong. Rec. 9413, 9422, 9443 (1947).] Specific care was taken to prevent the CIA or the Director of Central Intelligence from interfering in any way with the functions of the FBI [see 50 U.S.C. 403 (e) and 93 Cong. Rec. 9447-9448 (1947).]

³² Vandenberg testimony, House transcript, 6/27/47, p. 60.

³³ Allen Dulles testimony, *Ibid.*, p. 52-53, 66.

³⁴ *Ibid.*, p. 59.

have no "police power or anything else within the confines of this country,"³⁵ and that it was "supposed to operate only abroad."³⁶

This view was reiterated in the legislative history of the Central Intelligence Agency Act of 1949. The following exchange took place between Rep. Holifield and Rep. Sasser of the House Committee on the Armed Services, which had reported the 1949 bill:

Mr. HOLIFIELD. I would like to question the gentleman from Missouri. On page 4 of the report, subsection 5(b), it is provided that an employee while in this country on leave may be assigned to temporary duty in the United States for special purposes or reorientation prior to returning to foreign service.

In the original unification bill passed through the Committee on Expenditures, of which I am a member, we had the setting up of this CIA. It was clearly brought out at that time that no internal security work of any kind would be done by the CIA; that all of its intelligence work would be done in a foreign field. In view of this particular paragraph here I want to be assured at this time that such special duties as are mentioned here, or reorientation, do not apply to security functions in the United States.

Mr. SASSER. Mr. Speaker, if the gentleman will yield, I will say to the gentleman that that is correct, that this bill is in no wise directed to internal security. If they come back here it is purely a matter of leave, and reorientation, and training to go back into their work in foreign countries. 95 Cong. Rec. 1947-1948 (1949).

The bill which had been submitted by the Executive to establish the Agency in 1947 incorporated by reference the provisions of the Presidential Directive of January 22, 1946, which established the CIG and provided that it would have "no police, law enforcement or internal security functions."³⁷ Partly in an effort to ensure that the CIA did not exceed the bounds which Congress contemplated for its activities, the bill was amended to include this prohibition and other provisions of the 1946 Directive in its text. Members of Congress were concerned that the Directive could be amended, without consulting Congress, to assign to the CIA responsibilities which would affect the rights of the American people.³⁸

³⁵ *Ibid.*, p. 60.

³⁶ 93 Cong. Rec. 9448 (1947).

³⁷ The Presidential Directive also specified at Section 9 that "Nothing contained herein shall be construed to authorize the making of investigations inside the continental limits of the United States and its possessions except as provided by law and Presidential Directives." According to Lawrence Houston, this provision had been added to the Directive at the request of the FBI, which was concerned that the CIG should not become involved in investigating subversive groups in the United States. It was not included in the statutory draft, however, because of an agreement between the CIG and the FBI that CIG could gather foreign intelligence within the United States from such sources as businessmen who traveled abroad. (Lawrence Houston testimony, President's Commission on CIA Activities, 3/17/75, pp. 1656-1657.)

³⁸ Dulles testimony, House transcript, 6/27/47, pp. 57-58. When General Vandenberg was consulted about this possibility in executive session of the House Committee on Executive Expenditures, he responded, "No sir; I do not think there is anything in the bill, since it is all foreign intelligence, that can possibly affect any of the privileges of the people of the United States." But Congress continued to be concerned about the potential for a secret domestic police in the CIA. As Rep. Brown responded to General Vandenberg, "There are a lot of things that might affect the privileges and rights of the people of the United States that are foreign, you know." (Vandenberg testimony *Ibid.*, p. 32.)

By codifying the prohibition against police and internal security functions, Congress apparently felt that it had protected the American people from the possibility that the CIA might act in any way that would have an impact upon their rights.

The CIA, however, has interpreted the internal security prohibition narrowly to exclude investigations of domestic activities of American groups for the purpose of determining foreign associations. But history indicates that at the time of enactment of the National Security Act, threats to "internal security" were widely understood to include domestic groups with foreign connections. Investigations by the FBI of American groups with no such connections, in fact, have been a recent phenomenon. The original order from President Roosevelt to J. Edgar Hoover to begin internal security operations was to investigate foreign communist and fascist influence within the United States.³⁹ There is no evidence that by 1947 these investigations were considered foreign intelligence.

The CIA's domestic intelligence programs have not relied for their authority solely upon the premise that the agency's mandate to engage in foreign intelligence activities includes information gathering on foreign contacts of domestic groups. As authority for some of its operations with the United States, the Agency has relied upon Section 102(d) (3) of the National Security Act, which charges the Director of Central Intelligence with responsibility to protect intelligence sources and methods from unauthorized disclosure.⁴⁰

The CIA has construed the sources and methods language broadly to authorize investigation of domestic groups whose activities, including demonstrations, have potential, however remote, for creating threats to CIA installations, recruiters or contractors. In the course of carrying out these investigations the Agency has collected general information about the leadership, funding, activities, and policies of targeted groups.

These activities have raised serious questions as to (1) whether such a broad interpretation of the sources and methods language is consistent with the intent of Congress in enacting that provision, and (2) again, whether such an interpretation is consistent with the statutory prohibition against conduct by the CIA of internal security functions.

The sources and methods language was discussed only briefly in the recorded legislative history of the National Security Act. As originally drafted, the proposed Act had charged the Director with "fully" protecting sources and methods. In the House Committee executive session, however, General Vandenberg suggested that the Director could not possibly "fully" protect sources and methods, and the word "fully" was subsequently dropped.^{41a} According to the former General Counsel to the CIA, who was privy to many of the discussions and debates on the legislation as it was being prepared, the purpose of the sources and methods provision was essentially to allay concern in the military services that the Agency would not operate with adequate safeguards to protect the services' intelligence secrets.⁴¹ Despite congressional

³⁹ See Domestic Intelligence Report, p. 25.

⁴⁰ See detailed report on CHAOS report.

⁴¹ Houston, President's Commission on the CIA, 3/17/75, pp. 1654-1655; Staff summary of Lawrence Houston interview, 6/11/75.

^{41a} Vandenberg testimony House transcript, 6/27/47, p. 28.

concern, expressed again and again during hearings and floor debates on the bill, that the CIA was to have no potential for infringing upon the rights of American citizens and that it was to be virtually excluded from acting within the United States, no one questioned whether the sources and methods language would raise problems in this area. The lack of interest in the provision suggests that it was not viewed as conveying new authority to investigate; rather it charged the Director of Central Intelligence Agency with responsibility to use the authority which he already had to protect sensitive intelligence information. This could mean implementing strict security procedures within CIA facilities and conducting background investigations of CIA personnel (although according to the former Agency General Counsel, the CIA first requested that the FBI perform this investigative function; J. Edgar Hoover refused to assume this responsibility on grounds of insufficient personnel within his own Bureau⁴²). Given the prohibition against internal security functions, it is unlikely that the provision was meant to include investigations of private American nationals who had no contact with the CIA, on the grounds that eventually their activities might threaten the Agency.

⁴² Houston, President's Commission on CIA activities within the United States, 3/17/75, pp. 1655-1656.

