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COPY

DEPARTMENT OF STATE
The Legal Adviser

30 August 1967

MEMORANDUM FOR THE SECRETARY

THROUGH: S/S

FROM: L - Leonard C. Meeker

SUBJECT: Ervin Bill on Right of Privacy
INFORMATION MEMORANDUM

You inquired this morning as to the impact of the Ervin Bill, S. 1035, on the State Department and, in particular, as to limits it would place on the Department's ability to secure information about employees and applicants. During the day I have reviewed the bill as it was reported with amendments to the Senate on August 21 (Tab A); the report of the Judiciary Committee on the Bill (Tab B); and the views submitted by the State Department and the Civil Service Commission to Senator Ervin earlier this year (Tabs C and D). My tentative conclusion is that the Department would not be unduly restricted in its ability to secure information if the Bill as amended should be enacted into law.

Sub-section 1(a) of the Bill prohibits a requirement or request to an employee "to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears". One of the amendments to the Bill revises this sub-section, in accordance with State Department views, so as to authorize inquiry as to the national origin of an employee whenever it bears on his suitability for a particular assignment.

Sub-section 1(e) prohibits a requirement or request to an employee or to an applicant to submit to interrogation or psychological testing in regard to personal relationships,

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(Retyped O-DD/S for clarity)

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religious beliefs or practices, or attitude or conduct with regard to sexual matters. There is, however, a proviso under which a physician is entitled to ask questions or administer a test in these areas if he considers it necessary in the diagnosis or treatment of an employee or applicant. The proviso would seem to enable the State Department's Medical Division to elicit the information needed in making medical evaluations.

Sub-section 1(f) would ban lie detector tests by the State Department concerning personal relationships, religious beliefs or practices, or attitude or conduct with respect to sexual matters. The Department's letter to Senator Ervin implied that it was only in national security cases that the Department used lie detector tests. Sub-section 1(f) could have some impact on the State Department's use of these tests to the extent that they are used concerning sexual attitude or conduct in a security context. In view of the great doubt that lie detector tests are reliable, I think the Department should be quite ready to forego them. It is noteworthy here that legislation in Massachusetts, Oregon, Rhode Island and Hawaii has already outlawed such tests as a condition of employment or continued employment. It is evident from the Committee report and from the debate in the Senate yesterday (Tab E) that lie detector tests and psychological questioning have been put to some highly questionable uses.

Sub-sections 1(i) and 1(j) of the Ervin Bill would quite largely terminate the conflict of interest program under which the Department secures information from employees about their property holdings and business interests. The Civil Service Commission, in its letter to Senator Ervin, objected

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to these provisions in their present form and defended the conflict of interest program. The State Department letter of May 12 to Senator Ervin did not urge retention of the existing conflict of interest program. This is an area in which the State Department has much less specialized interest than departments having large-scale contracting responsibilities, such as the Department of Defense. I believe this is a matter as to which the Department should be prepared to accept the dispositions of the Ervin Bill if they are enacted into law for the Executive Branch as a whole.

Section 7 gives the FBI a complete exemption from all provisions of the Ervin Bill. CIA and NSA are asking for similar treatment, and CIA has requested a secret hearing before the Judiciary Committee. As the Bill stands now CIA and NSA are subject to its provisions in general but are exempted (by section 6) from the limitations on lie detector tests.

We will proceed to a further review of the Ervin Bill with responsible officers in the O area to see whether there are further amendments for which the State Department should now press.

Attachments:

Tab A - S. 1035.
Tab B - Report of the Judiciary Committee.
Tab C - Department's letter to Senator Ervin of May 12, 1967.
Tab D - Civil Service Commission's letter to Senator Ervin of May 9, 1967.
Tab E - Congressional Record for August 29 giving Senate debate on Ervin Bill.

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Executive Registry
67-4485/2

3 October 1967

The Honorable John W. Macy, Jr.
Chairman, U. S. Civil Service
Commission
Washington, D. C. 20415

Dear John:

With regard to S. 1035, I am sending along a copy of our letter to Congressman Mahon, Chairman of our Appropriations Subcommittee. An identical letter was also sent to Congressman Rivers, Chairman of our Armed Services Subcommittee.

With the exception of the second paragraph, which merely summarizes the Senate action, it is almost identical to our letter to Senator Russell, a copy of which I sent you earlier.

Sincerely,

/s/

L. K. White
Executive Director

Enclosure

cc: Legislative Counsel

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TRANSMITTAL SLIP	DATE 28 September 1967
TO: Mr. John S. Warner	
ROOM NO.	BUILDING

REMARKS:

Attached is a copy of the memo to Secretary Rusk from Leonard C. Meeker, Department of State General Counsel concerning Senate 1035.

[redacted]

R. L. Bannerman

25X1

FROM:

ROOM NO.	BUILDING	EXTENSION

FORM NO. 241 1 FEB 55 REPLACES FORM 36-8 WHICH MAY BE USED. (47)

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