

SECRET

CONFIDENTIAL

RESTRICTED

DATE 10 Mar 48

TO

FROM TO

FROM

① Chief, ASA	(10)	✓	Tech Staff	(96)
Executive O	(11)	✓	Ch, Security Div	(80)
Co'r Joint Oper	(12)	✓	Tech Staff	(81)
② Deputy Chief, ASA	(20)	✓	Ch, Materiel Br	(82)
✓ Ch, Comm Res Sec	(14)	✓	Ch, Methods Br	(83)
Ch, Hist Unit	(13)	✓	Ch, Protective Br	(84)
Ch, Pers Sec	(21)	✓	Ch, Maunt Br	(85)
Ch, Org & Tng Sec	(22)	✓	Ch, Res Lab Div	(70)
Ch, Plans & Oper	(23)	✓	Tech Staff	(71)
Ch, Materiel Sec	(24)	✓	Ch, Ch Ciph & Cif Br	(72)
Ch, Fiscal Sec	(25)	✓	Ch, Int Equip Br	(73)
Adjutant, ASA	(26)	✓	Ch, Elec & Elec Br	(74)
Ch, Sec Cont Sec	(27)	✓	Ch, Lab Serv Br	(75)
Ch, Operations Div	(90)	✓	Ch, C'logic Br	(76)
Ch, Lab Br	(91)	✓	Ch, Pers & Tng Br	(61)
Ch, Machine Br	(92)	✓	Ch, Supply Br	(62)
Ch, Crypt Br	(93)	✓	Co, Arlington Hall	(40)
Ch, Int Cont Br	(94)	✓		
Ch, I & D Br	(95)	✓		

 Approval & Return As Requested Concurrence or Comments Information & Forwarding Information & Return Information & File Recommendation Signature if approved Your action by Info upon which to base reply

Of interest in connection with
our recent attempts at legislation.

J

File
Legislation - Esp Act

Decree of 9 June 1947, taken from "VEDOMOSTI" 16 June 1947

Concerning Responsibility for Divulging State Secrets
and for Loss of Documents, Safeguarding State Secrets

In the aim of establishing unified legislation and reenforcing responsibility for divulging information appearing to be state secrets, a list of which has been established by the Council of Ministers of the USSR in its decree of the 8th of June, this year-- the Presidium of the Supreme Soviet decrees:

1. Divulging information containing state secrets, particularly in the case of individuals entrusted with this information, or who may have received this information by reason of their official position, insofar as these actions may not have been occasioned by treason to the fatherland or espionage--is punishable by imprisonment in a correctional labor camp for a term of eight to twelve years.

2. Divulging by an official of the military service (War Office) of information of a military character, composed of state secrets, insofar as these actions may not have been occasioned by treason to the fatherland or espionage--is punishable by imprisonment in a correctional labor camp for a term of ten to twenty years.

3. Divulging by a private person of information composed of state secrets, insofar as these actions may not have been occasioned by treason to the fatherland or espionage is punishable by imprisonment in a correctional labor camp for a term of five to ten years.

4. Loss by accountable parties of materials, documents and publications containing information composed of state secrets, if these actions by their own nature do not bring upon themselves, by law, more severe punishment--is punishable by imprisonment in a correctional labor camp for a term of four to six years. If these violations involve more serious consequences, it is punishable by imprisonment in a correctional labor camp for a term of six to ten years.

5. Loss by officials of the military service of documents, containing information composed of state secrets, if these actions by their nature do not bring on themselves, by law, more severe punishment--is punishable by imprisonment in a correctional labor camp for a term of five to eight years. If these violations involve more serious consequences, it is punishable by imprisonment in a correctional labor camp for a term of eight to twelve years.

6. Disclosing or transmitting abroad of inventions, discoveries and technical improvements containing state secrets, produced within the borders of the USSR or produced abroad by citizens of the USSR, in the service of the state, if these violations may not have been occasioned by treason to the fatherland or espionage--is punishable by imprisonment in a correctional labor camp for a term of ten to fifteen years.

7. Military Tribunals shall have jurisdiction over violations described in this decree.

8. In connection with the publication of the present decree, the following are superseded:

a. The decree of the Presidium of the Supreme Soviet of 15 November 1943; "Responsibility for Divulging State Secrets and for Loss of Documents containing State Secrets"

b. Point "a", Page 25, Statute on Military Crimes.

~~SECRET~~DRAFT

4 Feb 48

SUBJECT: Comments on "Special Report ESLG/rvp, dated 19 Jan. 1948" in re S. 1019

TO: Coordinator of Joint Operations, USCIB-USCIOC

1. The following comments apply to Enclosure (A) to the subject report:

a. (1) Page 1, third paragraph, second sentence: Recommend insertion of the word "peacetime" in second line, immediately before the word "protection".

(2) Reason: In wartime, although it is still necessary to prove intent to injure the United States, the temper of the public, the very stringent penalties under Sec. 2 of the "Espionage Act" (up to death or thirty years imprisonment), and the normal caution exercised by all citizens in wartime are sufficient for the protection, during wartime, against leakage of vital information of the type contemplated under S. 1019. It is under peacetime conditions that S. 1019 would be most desirable, for "intent to injure" would be much more difficult to prove and the temper of the public is quite different. However, from our point of view, leakage in peacetime is just as disastrous as in wartime.

~~SECRET~~

~~SECRET~~

b. (1) Page 1, third paragraph, last line: The statement is not completely accurate, and its inaccuracy has far-reaching consequences on the subsequent reasoning.

(2) Reason: (a) The Act cited, that of 10 June 1933 (48 Stat. 122), is quite limited in its scope. It by no means, as claimed in the proposed statement, makes it a crime "to disclose details of any diplomatic code." Following is the complete wording of the Act:

That whoever, by virtue of his employment by the United States, shall obtain from another or shall have custody of or access to, or shall have had custody of or access to, any official diplomatic code or any matter prepared in any such code, or which purports to have been prepared in any such code, and shall willfully, without authorization or competent authority, publish or furnish to another any such code or matter, or any matter which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United States, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. Act June 10, 1933 (48 Stat. 122; 22 U. S. C. 135).

It is obvious that under this Act, so long as the alleged violator does not "publish or furnish to another" either (a) the actual code itself or (b) the contents or text of a message, that is, "any matter prepared in any such code", no indictment could be drawn, much less could a conviction be obtained. In order to understand the limited applicability of the Act cited, its history must be understood. It was a compromise reached only after the storm aroused by the introduction of a bill allegedly infringing freedom of press and speech had died down. Further, referring to the matter on page 2, fourth line: in view of the remarks made above in

~~SECRET~~

~~SECRET~~

connection with the Act cited, it is believed quite unwarranted to say that "That Act ... provides a high degree of protection for that part of our communication intelligence effort which may be directed solely against foreign diplomatic codes ...", since a person might publish in full detail a complete account of the whole ASA and CSAW organizations, their special facilities, techniques, successes and failures, and so on, and yet not violate the provisions of the Act cited. So long as no diplomatic codes or texts are published or handed over, there is no violation of the provisions of the Act in question and there can therefore be no punishment.

(b) For the foregoing reason, it is suggested that the sentence of reference (3rd line from bottom of page 1) be changed to read:

"The Act of 10 June 1933 (48 Stat. 122) makes it a crime punishable by a \$10,000 fine, or 10 years in jail, or both, to furnish to another any official diplomatic code or matter which has been prepared in such a code. It may be noted that the Act in question was rushed through under special circumstances in 1933. It arose from hasty attempts to prevent further revelations by Yardley after the publication of his sensational book 'The American Black Chamber' in 1931. The bill first drawn up in the excitement caused by the disclosure that Yardley had written a second book, the manuscript of which was already in the hands of a publisher, was of such a broad scope that it immediately aroused the most strenuous opposition from the press and even within the Congress itself. When the storm aroused by this bill died down, the innocuous measure passed on 10 June 1933 was the most that could then be obtained in the way of protecting cryptanalytic secrets. It was, however, effective to meet the emergency situation, for it was known that Yardley's proposed second book was replete with the actual texts of messages. With passage of the

~~SECRET~~

~~SECRET~~

measure, publication of Yardley's manuscript was prevented; and this Act serves as a deterrent against the publication of any book which discloses a diplomatic code or messages which have been prepared in such a code. However, it is very important to note that this Act is quite limited in its scope; anybody who is the possessor of detailed communication intelligence information can disclose all of it without any punishment whatsoever under the Act, as long as he does not publish or hand over physically any code itself or a copy thereof or any messages which had been prepared in the code. This sort of protection is not what we now need or are seeking in the present bill. We are seeking legislation which will protect the large amount of general and specific technical information which is extremely vital to national security and which we have built up at great pains and expense over the past two or three decades, using the people's money. It can all be rendered more or less worthless, without handing over any code and without publishing any solved messages, merely by telling in detail what we know, or have, or are accomplishing in this field. Also, it is important to note that the Act of 10 June 1933 only applies to diplomatic codes and therefore does not extend to that part of our communication intelligence effort which may be directed against foreign military, naval, air and other codes, nor to the codes used by our own military establishment and intelligence agencies."

(Cancel first 10 lines on page 2, if foregoing is adopted.)

c. Page 2, lines 13-16: What we hope to accomplish by S. 1019 is the prevention of leakage by well-meaning people who have no intent to injure the U.S. but who simply close their eyes to the consequences--either for monetary gain from potential publishers or for personal vanity, prestige, etc. The wording beginning in line 14, "with ostensibly innocent intent, a method which is just as effective as direct delivery in getting the information into the hands of an intended foreign-government-agent-recipient", and the fact that this

~~SECRET~~

~~SECRET~~

argument is given first place in bringing up the Espionage Act, implies that the chief or at least one of the important reasons for legislation such as that contemplated in S. 1019 is to prevent such a source of leakage as the one cited. It is highly questionable whether this is an important reason. At any rate the argument at this point is so weak as to make a change advisable. A method such as is implied therein, as a means of getting information into foreign hands, is rather far-fetched, for the person is really acting as a foreign agent; a person who acted on the secret assumption that he could say, if detected, that he had no intent to injure the U.S., could very probably be proved to be an agent. On the other hand, the people at whom S. 1019 is aimed are not potential or actual enemy agents of the foregoing type. On the contrary, a person who constitutes a serious security hazard so far as communication intelligence information goes, may really feel completely innocent of intent to injure the U.S. For example, Yardley stated time and again that far from having any intent to injure, he was really acting as a patriotic citizen by "disclosing things which showed the blindness of bureaucrats in closing 'The Black Chamber'." There is no question that the Espionage Act closes only part of the gap in proper legislation to protect communication intelligence information, but the argument that is employed to disclose this is faulty and can be replaced by a better one. The following wording is suggested:

~~SECRET~~

~~SECRET~~

"This Act cannot be invoked to punish people who disclose vital information without any intent to injure the United States. This category includes people who, for reasons of personal prestige or vanity, or from misguided motives such as in the Yardley case, or in a desire to profit in a monetary way, proceed to tell all about their wartime experiences (as others are doing, witness Capt. Butcher's 'My Three Years with Eisenhower', Capt. Zacharias' 'Secret Intelligence', Col. Allen's 'Lucky Forward'). Publication of information concerning our communication intelligence activities by people who fall in this category is just as effective as direct *disast* delivery, by secret agents, of the information to foreign governments. Communication intelligence information is peculiarly vulnerable to even the most indirect roundabout, and piece-meal revelation." ... Etc. ()

The remainder on page 2, sentence beginning on line 17, is satisfactory.

d. (1) Page 3, at end of 10th line, insert:

"Establishment of a means that would make possible the."

(2) Page 3, line 13, after the word "information" add: "by preventing reconstruction of those systems from a comparison of the code texts with the plain texts of message which had been transmitted in those systems."

e. Page 7, line 14: The statement regarding "our inability to decode the important Japanese military communications in the days immediately leading up to Pearl Harbor" is an understatement. The truth of the matter is that we were unable to read a single high-echelon Japanese Army or Air Force message until April 1943, a period of well over a year after Pearl Harbor; and it took another six months, once the nature of the system was understood, to build up the procedures and the staff to a point where quantity production of translations

~~SECRET~~

~~SECRET~~

became a possibility. It is impossible to estimate the far-reaching consequences that a reverse of the actual situation in this regard might have had on the tactical and strategic plans of the U.S. Had we been able to read all these high-echelon Japanese communications during the first year or two of the war in the Pacific, the entire course of that war might possibly have been different. It is suggested that the sentence be changed to read as follows:

"It is not far-fetched to suggest that the entire course of the war in the Pacific might have been very different had the U.S. been able to decode all Japanese Army and Japanese Air Force high-echelon secret communications upon the outbreak of the war there and for the first year or two of that war. For it is a fact that whereas in 1931 Japanese military codes were childishly simple and naive, by 7 December 1941 they had become so complicated that it took almost two full years' time and the work of thousands of people before the U.S. Army was in a position to decode these high-echelon communications. It is impossible to estimate what this two-year struggle with these high-echelon communications cost the U.S. people in money and in the lives and health of its soldiers who fought the Japanese more or less blindly for that period of time."

f. (1) Page 8, last sentence, continuing on page 9:
It is very doubtful whether an exception would be made to the general and long-standing rule that "ignorance of the law is no excuse." There is nothing in the bill which provides for an exception to be made in the case of a person who pleads ignorance of the meaning of the indications of classified status, or of the fact that the information is classified, if an indication is not present. It is understood that the interpretation of non-applicability of the penalties to a person

~~SECRET~~

~~SECRET~~

who pleads ignorance of the classified status of the information is an interpretation submitted by some legal authorities who were consulted by the I & S Subcommittee. However, it is felt that when the Congress comes to examine this bill there will be a considerable amount of questioning raised on this point. It would appear that an innocent person would in the final analysis be at the mercy of a court or a jury, for whether a court or a jury would give credence to a plea of ignorance would be within their province.

(2) For the foregoing reason, and because it is too late to change the wording of the bill, it is suggested that the sentence in question be allowed to stand, with the insertion of the word "probably" immediately before the word "safe".

g. (1) Page 9, 12th line, the sentence beginning "That such a person has not yet come to light ..." -- The argument here is exceptionally weak and might lead to the casting aside of the entire measure, since some member of Congress might well ask: "If that is true up to now, why should not the situation continue to rest on the same basis?" Moreover, it is believed that the statements "That such a person has not yet come to light indicates loyalty, patriotism, and restraint" ... and "it must also be regarded as evidence of incredibly good luck" are erroneous. In the first place, the end of the war has not yet formally been declared terminated and therefore the more severe penalties under Sec. 2, Title I

~~SECRET~~

~~SECRET~~

of the Espionage Act are still applicable, and serve as a deterrent to those who would violate the provisions of that Act. In the second place, there have already been some instances of leakage of cryptanalytic information by persons "with no actual malice." All three services have already encountered such cases. And even during the war there were at least two instances in which leakage of vital communication intelligence information occurred "with no malice"--the disclosure of the Navy's reading of the Japanese Naval traffic prior to the Midway Battle and the disclosure of the Navy's reading of the Japanese Naval traffic concerning the inspection flight by Admiral Yamamoto. Prosecution of the persons who allowed this information to be disclosed was not possible for various reasons, principally because of the difficulty of proving "intent to injure" and because it was felt that in the absence of proper legislation a prosecution ending in an acquittal might be more damaging than taking a chance that no catastrophic consequences would follow the disclosure.

(2) For the foregoing reasons, it is suggested that the sentence beginning on line 12 be deleted and the following two sentences be substituted:

"Already there have been instances of leakage of information concerning U.S. cryptanalytic successes in the last war and as the date of the formal declaration of the termination of the war approaches, and as more and more persons publish their wartime experiences with considerable monetary profit, the temptation to capitalize on their cryptanalytic experiences may prove

~~SECRET~~

~~SECRET~~

too great for some people who have had such experience to resist. It may therefore be anticipated that books or articles on the subject will be forthcoming sooner or later--unless proper legislation is now enacted to prevent such an eventuality. We can afford to take no chances in this situation and trust to good luck."

h. (1) Page 10, 10th line: The statement "It might be asked why this legislation is needed now when we got through World War II without it", implies that there were no moments when very serious apprehensions were entertained on the score of leakages. That there were plenty such moments can hardly be questioned, and the implication should be eliminated. Continuing, the statement goes on to say: "The answer is that even though several potentially serious leaks actually occurred during the war they apparently did not reach the enemy, probably because of the protection afforded by wartime censorship plus the fact that activity of enemy agents in the U.S. was effectually curtailed." Unless recollection is inaccurate, within a few weeks after the Midway leak, drastic changes began to be introduced in Japanese Navy cryptographic systems and communication procedures. These caused the U.S. Navy a great deal of trouble and hindered successful cryptanalysis for some time thereafter.

(2) It is therefore suggested that this portion of the argument be changed to correspond more nearly with the facts. The following is suggested as a replacement for the two sentences beginning on line 10, page 10:

"It might be asked why this legislation is needed now when we apparently got through World War II without it. The answer is that we very nearly didn't get through--

~~SECRET~~

~~SECRET~~

there were times when authorities on the highest level spent many anxious days in apprehension as to the possibly serious consequences that might result from certain leakages that did occur--leakages that might have been catastrophic, and in one case was actually extremely serious in its effect. Of course, wartime censorship helped and the elimination or curtailment of effective work by enemy agents helped."

(The rest, beginning with "But in peacetime ..." to remain unchanged.)

i. The remainder of Enclosure (a) appears to be satisfactory.

2. Enclosure (B) should be modified in the light of the comments made in Par. 1 above.

HAROLD G. HAYES
Colonel, Signal Corps
Chief, Army Security Agency

~~SECRET~~

The Washington Post

Registered in U. S. Patent Office

An Independent Newspaper
Published every day in the year by
The Washington Post Company

EUGENE MEYER, Chairman of the Board
PHILIP L. GRAHAM, President and Publisher

ROBERT ELLISTON Editor
ALEXANDER F. JONES Assistant to the Publisher
JAMES RUSSELL WIGGINS Managing Editor
CHARLES C. BOYSEN Business Manager
DONALD M. BERNARD Advertising Director
JOHN J. CORSON Circulation Director

The Associated Press is entitled exclusively to use for republication of all news dispatches credited to it or not otherwise credited in this paper and local news of spontaneous origin published herein. Rights of republication of all other matter herein are also reserved.

1337 E Street N.W., Washington 4, D. C.
Telephone National 4200

Offices of National Advertising Representatives
New York 270 Madison Avenue (18)
Chicago 360 North Michigan Avenue (1)
Philadelphia 225 South 15th Street (2)
Detroit General Motors Building (2)

CARRIER DELIVERY

City Zone		Sunday Only		Daily Only	
Daily and Sunday	One week...\$.30	One week...\$.10	One week...\$.20	One week...\$.30	One week...\$.40
One month... 1.35	One month... .45	One month... .50	One month... .60	One month... .70	One month... .80

Elsewhere		Sunday Only		Daily Only	
Daily and Sunday	One week...\$.35	One week...\$.15	One week...\$.20	One week...\$.30	One week...\$.40
One month... 1.50	One month... .65	One month... .70	One month... .80	One month... .90	One month... 1.00

BY MAIL—PAYABLE IN ADVANCE

Daily and Sunday		Sunday Only		Daily Only	
One year...\$18.00	One year...\$7.80	One year...\$10.40	One year...\$10.40	One year...\$10.40	One year...\$10.40
Six months... 9.00	Six months... 3.90	Six months... 5.20	Six months... 5.20	Six months... 5.20	Six months... 5.20
Three months... 4.50	Three months... 1.95	Three months... 2.70	Three months... 2.70	Three months... 2.70	Three months... 2.70
One month... 1.50	One month... .65	One month... .90	One month... .90	One month... .90	One month... .90

Rates to Foreign Countries
will be furnished upon request

Entered at the Postoffice, Washington, D. C.,
as second-class mail matter.

*** Saturday, January 3, 1948

Supersonic Security

It is debatable whether the editors of *Aviation Week* magazine actually injured national security in publishing the story that an Air Force experimental rocket plane has gone faster than the speed of sound. If, as the magazine's editors contend, the Air Force had been preparing a release of its own on this accomplishment in breaching the supersonic wall, then all the subsequent fuss is meaningless. Prevention of the leakage of vital information is of course a matter of the utmost importance. But the lesson in the present case will have been lost if the only result is an effort to penalize the magazine. More than anything else, the incident demonstrates the need for a unified, mature security policy in national defense. That there is no such policy now is only too obvious.

THE WASHINGTON POST
Washington, D.C.
3 January 1948

It cannot be denied that some information has been published that may be harmful to our long-range security. Much of this information has been of a technical nature, such as was contained in the Smyth report on atomic energy. As one top scientist put it, we have been doing the Russians' research for them. If our defense is to be adequate, then manifestly we must have some military secrets which we do not display in a showcase. A situation in which important information leaks out merely for want of a coordinated security policy is of course dangerous. At the same time we cannot afford to go to the opposite extreme of a completely clamlike approach in which the label "national security" is applied to every scientific advance.

The problem is one for Secretary Forrestal. Part of the difficulty lies among his subordinates in the various services. There is still a tendency, no doubt a hangover from preunification days, for each service to strive to outdo the others in "competing" for publication space. A little less Hollywood press agency and a little more accent on unity would be helpful. Secondly, there must be recognition that the American press as an entity is not only loyal but is anxious not to violate the requirements of genuine security. Consequently, a basic step in enlisting cooperation of the press is to define what those requirements are.

More than that, there must be an effort to understand the particular problems of the press—to understand, for example, the reaction when the results of a reporter's initiative are bottled up for "security" only to have them released inconsistently elsewhere. What is needed above all else is one agency to which the press can refer its security questions, an agency open 24 hours a day. Not only must this agency have authority to lay down a security policy with respect to outside publication, but there must also be assurance that its decisions will be respected within the services as well. The prime requisite of this office is that it have the confidence of the person with whom it is dealing. There will be no difficulty in enlisting cooperation of the press if the press is convinced that security policy is a matter of intelligent planning and not a helter-skelter affair left to whim and caprice.

THE WASHINGTON POST
 Washington, D.C.
 7 Jan 48

Voluntary Censorship

A good example of the inadequacy of the hodgepodge military security system under which the country is now operating was the story in Sunday's newspapers about the operation of the world's first low-pressure supersonic wind tunnel at the University of California. Funds for the development of this tunnel were provided by the Office of Naval Research. Yet the Secretary of Defense had no prior knowledge of the release. Whether the announcement in this case actually constituted a breach of security is not the question. The point is that there are some areas of research in which maintenance of secrecy is essential to national security. Top scientists associated with the Government are genuinely concerned about the military implications of some of the technical information which already has found its way into print.

A reader has seen in our editorial of last Saturday, "Supersonic Security," an implied plea for a return of voluntary censorship such as existed during the war under Byron Price. We intended no such formal connotation. What we suggested was the establishment of a single office or agency, respected by the press, with authority to coordinate and pass upon military information vital to the national security. Our suggestion was inspired by the present unintentional leakage of such information for want of a consistent security policy. It is obvious that from the security standpoint the Government's left hand does not know what the right is doing.

Congress recognized the existence of an area in which secrecy is paramount in passing the Atomic Energy Act of 1946. Indeed, the Atomic Energy Commission already has instituted a reasonable procedure for the re-

lease of important information. The Espionage Act of 1917 also covers military secrets, although there is some difficulty of application in ordinary cases because of its concern with "intent." Within the framework of these laws there is always a certain amount of voluntary censorship by the press. The trouble is that in many instances the press is not competent to know what is and what is not information vital to security. We think there ought to be a clear definition of such information. The way to obtain the cooperation of the press in this cause is not by enacting additional legal penalties but by substituting for the present willy-nilly approach a unified security policy administered by the Department of National Defense.