

Proposed Amended Version of Bill S-1019

AG/AS-3, Air Intelligence Requirements Division,
Collection Branch, 440 Major E. J. Imboden

2 Sep 47

Office of the Air Judge Advocate

to Col H. Hunter/ASAC

1. Consent of this office has been requested "as to correct legal phraseology, form and such matters" of attached draft.

2. While there exists no legally required form for the body of a Congressional bill it is believed that attached draft may be materially improved as to phraseology and content as well as to form. In setting out the body of a statute it is helpful to define words and phrases employed so as to remove ambiguity as to what is intended to be achieved by the proposed enactment. However, definitions should be limited to the fewest number of words or phrases possible as a definition may confuse as well as clarify and simplify the legislative meaning. The definitive language may itself require construction. Only important words or terms should be defined. In the submitted draft almost each line of the numbered clauses of information involved requires reference to a definition or interpretive clause later set out in another section. These later expositions themselves are not free from ambiguity; for example, section 3 states "classified information" shall be construed to mean "information segregated, and limited or restricted in dissemination or distribution for the purpose of national security, by a United States Government agency, and marked accordingly." To secure a conviction under this bill, it would be necessary to prove that the information was "segregated" etc. Being a criminal statute it would be strictly construed and any ambiguity would be resolved in favor of the person charged with violation of the statute. It is believed this wording can be made more definite. Section 3 further provides that the term "classified procedures and methods or used herein shall be construed accordingly." This phrase does not at all appear in the body of the enactment but in the later definition in Section 3 of the term "communication intelligence," which definition is also believed not free from ambiguity. It is there directed that such term is to be construed to mean "a field of endeavor which includes all classified procedures and methods used in the interception of communications, by other than the intended recipients."

3. It is further believed that the term "a person not authorized to receive such information" need not be set out for separate definition but that such definition may be incorporated where the phrase appears in the main body of the enactment. Further, this term as defined may operate to curtail the authority granted the Central Intelligence Agency, established by the National Security Act of 1947.

4. It is noted that no test of "scienter" is imposed by the proposed enactment in the prohibited transfer of classified information; i.e., it does not require that the person is intentionally transmitting such information knowing it to be classified information or knowing that the recipient of such information to be a person not authorized to receive the information. Where one not authorized to receive classified information should be fraudulently representing himself as a

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AS/AS-2, Air Intelligence Requirements Division
Collection Branch Attn: Major P. L. Langheim

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lawful recipient receive classified data which this bill is designed to protect, he would not have committed a violation of this bill whereas the person he tricked into furnishing the information could be indicted.

5. The bill as drafted presents the unusual situation of having the "definition" portion of the bill almost twice the size of the main body of the bill. It is believed the form may be materially improved by placing all necessary definitions into one section and placing each definition in a subparagraph thereof. Further, as the definitions materially change the ordinary meaning given to the terms defined, it is recommended that the section on definitions be placed at the beginning of the statute. This will advise a person reading the bill of the intended meanings of the terms used as he reads through the body thereof and will more readily secure an interpretation in accordance with its intent.

6. In view of the above, it is urged that your office not censor in attached draft prepared by USOTR-SECDEF Subcommittee on Security and Intelligence.

1 Incl: a/s

BRUNER GREGG
Colonel, J.A.C.S.
The Air Judge Advocate