

AS-20 AS-14 28 Apr 47

Bill S.1019

1. The principal objections that have been raised against S.1019 and its predecessor, S.805, are founded upon fears that the enactment of such legislation would be tantamount to the establishment of a peace-time censorship and might well constitute a serious blow directed against freedom of speech and press. The text of the present bill is intended to be directed specifically against the disclosure of cryptologic information, but it goes far beyond this by making it a crime to publish or divulge "any message, document, writing, note, paper or the contents or meaning thereof" which has at any time been transmitted in code, without getting specific, official permission. Since a great deal of government business is translated by messages in code or cipher, the bill would appear to cover practically all but the most routine State, War or Navy Department business. Hence, it is argued, a bill such as S.1019 might, if enacted into law, make it possible for officials to use it for self-protection or to further doubtful political ends. The conclusion one reaches is almost inescapable, viz., that the wording of S.1019 is still too broad--in fact, so broad as to preclude any possibility of its being enacted now or in the near future.

2. Another serious objection appears in connection with Section 2 of the bill. This Section is apparently directed against American citizens who have served in foreign armies or navies or have been employed by foreign governments. But it is worded so broadly that it covers non-Americans, too. The question is: how can a U. S. law operate to force a non-U.S. citizen to obtain permission of the Secretary of State, the Secretary of War, and the Secretary of the Navy before divulging certain information? This Section contains an impractical provision and would simply be more or less meaningless.

3. The bill seems to have been drawn up on the theory that only a person who has obtained the information in an official capacity, by virtue of his service in, for, or with the government, can or should be subjected to its provisions. But most of the recent violations of security have been committed by people who have never worked for the government or been in the Army or Navy. They would not be touched by the proposed law.

4. The present bill only takes care of willful leakages, where an intent to disclose information must be present. But in many

AS-20 AS-14 28 Apr 47

Bill S.1019 (continued)

cases, leakage of classified cryptologic information comes from carelessness or indiscretion, because of a failure to realize the real import of the disclosure or to understand the effect it may have on our security. And it seems to me that the latter source of leakage is what we should try to cover as well as the former.

5. The British Official Secrets Act, which apparently works very well (except possibly in the case of "personages" on the highest government level), puts the maintenance of security on a different basis than that of having to obtain authority before making a disclosure. It puts the burden on the individual possessing the information--no matter how he obtained it--and tells him he is responsible for its security. If a person having information in his possession uses it "for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State," (underlining supplied) or if he "fails to take reasonable care of, or so conducts himself as to endanger the safety of (the material) or information" he is deemed guilty of violating the law. Nowhere does it provide for a proper authority to whom one might apply for permission to disclose. The disclosure having been made, all that is necessary to penalize the one who has made it is to prove that it is or was prejudicial to the safety or interests of the State. The person who makes a disclosure does so at his own risk, and if it turns out to have constituted a violation of security, he can be penalized. That sort of law has plenty of "teeth" in it; yet nobody can say that it sets up a censorship or that there is less freedom of speech or press in Great Britain than in the U.S. because of the Official Secrets Act.

6. Taking a cue from the latter, I have made an attempt to parallel it in the present S.1019, to cover both sources of leakage mentioned in Par. 2 above, and to parallel the severity of the penalty with the classification of the information disclosed--the higher the classification, the more severe the penalty. This has not been an element in any previous bill that I am aware of, but is one that appears reasonable. The attached draft is therefore submitted for such use as may be made of it.

2 Incls

1. Copy of S.1019
2. Draft of proposed revision

WILLIAM F. FRIEDMAN
Chief, Communications Research

see to
the fundman

See also

HR 2965

80TH CONGRESS
1ST SESSION

S. 1019

Wap. Zeller
Et 92

IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, MARCH 24), 1947

Mr. GURNEY (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To insure further the military security of the United States by preventing disclosures of information secured through official sources.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That whoever, by virtue of his employment by or perform-
- 4 ance of services for the United States or by virtue of his
- 5 employment by any person, firm, or corporation performing
- 6 services for the United States or by virtue of his service in
- 7 the armed forces of the United States, having obtained, or
- 8 having had custody of, access to, or knowledge of (1) any
- 9 information concerning the nature, preparation, or use of any
- 10 code, cipher, or cryptographic or cryptanalytical system of

1 the United States or any foreign government; or (2) any
2 information concerning the design, construction, use, main-
3 tenance, or repair of any device, apparatus, or appliance
4 used or prepared or planned for use by the United States or
5 any foreign government for cryptographic or cryptanalytic
6 purpose; or (3) any message, document, writing, note,
7 paper, or the contents or meaning thereof, which has been,
8 or purports to have been, prepared or transmitted in or by
9 the use of any code, cipher, or cryptographic system of the
10 United States or any foreign government; or (4) any in-
11 formation concerning the cryptographic or cryptanalytic
12 activities of the United States or any foreign government;
13 or (5) any information which has been or purports to have
14 been derived from cryptanalysis of messages transmitted by
15 the United States or any foreign government, shall willfully,
16 without authorization by the head of the department or
17 agency by which such person was employed or in which he
18 performed services at the time when he had custody of or
19 access to or obtained knowledge of the above-described in-
20 formation or material, or if such department or agency is
21 no longer in existence, without joint authorization by the
22 Secretary of State, the Secretary of War, and the Secretary
23 of the Navy, communicate, furnish, or transmit to another
24 or publish any such information or material, shall be fined
25 not more than \$10,000 or imprisoned not more than ten

1 years or both. Authorizations, as herein provided, shall be
2 granted only in accordance with regulations prescribed by
3 the President.

4 SEC. 2. Whoever, by virtue of his employment by or
5 performance of services for any foreign government or by
6 virtue of his service in the armed forces of any foreign govern-
7 ment, having obtained, or having had custody of, access to,
8 or knowledge of (1) any information concerning the nature,
9 preparation, or use of any code, cipher, or cryptographic or
10 cryptanalytical system of the United States; or (2) any
11 information concerning the design, construction, use, main-
12 tenance, or repair of any device, apparatus, or appliance used
13 or prepared or planned for use by the United States for
14 cryptographic or cryptanalytic purpose; or (3) any message,
15 document, writing, note, paper, or the contents or meaning
16 thereof, which has been, or purports to have been, prepared
17 or transmitted in or by the use of any code, cipher, or crypto-
18 graphic system of the United States; or (4) any information
19 concerning the cryptographic or cryptanalytic activities of
20 the United States; or (5) any information which has been or
21 purports to have been derived from cryptanalysis of messages
22 transmitted by the United States, shall willfully, without joint
23 authorization by the Secretary of State, the Secretary of War,
24 and the Secretary of the Navy communicate, furnish, or trans-
25 mit to another or publish any such information or material,

1 shall be fined not more than \$10,000, or imprisoned not more
2 than ten years, or both.

3 SEC. 3. The term "foreign government" as used herein
4 includes any person or persons acting or purporting to
5 act for or on behalf of any military or naval force, faction,
6 party, department, agency, or bureau of or within a foreign
7 country, or for or on behalf of any government or any
8 person or persons purporting to act as a government within
9 a foreign country, whether or not such government is recog-
10 nized by the United States.

11 SEC. 4. (a) The terms "code", "cipher", and "crypto-
12 graphic" as used herein include any secret writing, decep-
13 tion, mechanical or electrical device, or other method used
14 for the purpose of disguising or concealing the contents
15 or the meaning of any communication.

16 (b) The term "cryptanalytic" as used herein includes
17 all methods of interception and all methods of obtaining
18 information of the contents of cryptographic communication.

19 SEC. 5. Nothing in this Act shall prohibit the furnish-
20 ing, upon lawful demand, of information to any regularly
21 constituted committee of the Senate or House of Repre-
22 sentatives of the United States of America, or joint com-
23 mittee thereof.

A BILL

To insure further the military security of the
United States by preventing disclosures of
information secured through official sources.

By Mr. GURNEY

APRIL 1 (legislative day, MARCH 24), 1947
Read twice and referred to the Committee on the
Judiciary

D R A F T

A BILL

To insure further the military security of the United States by preventing disclosures of classified information relating to cryptographic and cryptanalytic matters and of importance to the safety of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever having been given, or having obtained, or having had custody of, access to, or knowledge of (1) any officially classified information concerning the nature, preparation, or use of any code, cipher, or cryptographic or cryptanalytical system of the United States or any foreign government; or (2) any officially classified information concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or cryptanalytic purpose; or (3) the contents of any message prepared or transmitted in or by the use of any code, cipher, or cryptographic system of the United States or any foreign government; or (4) any officially classified information concerning the cryptographic or cryptanalytic

before prior declassification and official release

activities of the United States or any foreign government; or

(5) any officially classified information which has been derived from cryptanalysis of messages transmitted by the United States or any foreign government, shall (a) use the information or messages in a manner prejudicial to the safety^X or interests of the United States or for the benefit of any foreign power to the detriment of the United States, or (b) retain any document or other matter of the categories described under items (1), (2), (3), (4), and (5) above, when he has no right to retain it or when it is contrary to the safety or interests of the United States for him to retain it, or (c) fails to comply with all directives issued by lawful authority with regard to the return or disposal thereof, or (d) fails to take reasonable care of, or so conducts himself as to endanger the safety of any document or other matter of the categories described under items (1), (2), (3), (4), and (5) above, shall (i) in the case of matter officially classified "restricted", be fined not more than \$1000 or imprisoned not more than two years or both; (ii) in the case of matter officially classified "confidential", be fined not more than \$5000 or imprisoned not more than five years or both; and (iii) in the case of matter officially classified "secret" or higher, be fined not more than \$10,000 or imprisoned not more

than ten years or both.

SEC. 2. The release to the public of any classified information or matter of the categories described under items (1), (2), (3), (4), and (5) of Section 1 shall be in accordance with regulations prescribed by the President.

Sections 3, 4, and 5--same as present similarly numbered sections.

80th CONGRESS
1st SESSION

S. 1019

IN THE SENATE OF THE UNITED STATES
April 1 (Legislative day, March 24), 1947
Mr. Gurney (by request) introduced the following bill; which
was read twice and referred to the Committee on the Judiciary

A BILL

To insure further the military security of the United States by preventing disclosures of information secured through official sources.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever, by virtue of his employment by or performance of services for the United States or by virtue of his employment by any person, firm, or corporation performing services for the United States or by virtue of his service in the armed forces of the United States, having obtained, or having had custody of, access to, or knowledge of (1) any information concerning the nature, preparation, or use of any code, cipher, or cryptographic or cryptanalytical system of the United States or any foreign government; or (2) any information concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or

planned for use by the United States or any foreign government for cryptographic or cryptanalytic purpose; or (3) any message, document, writing, note, paper, or the contents or meaning thereof, which has been, or purports to have been, prepared or transmitted in or by the use of any code, cipher, or cryptographic system of the United States or any foreign government; or (4) any information concerning the cryptographic or cryptanalytic activities of the United States or any foreign government; or (5) any information which has been or purports to have been derived from cryptanalysis of messages transmitted by the United States or any foreign government, shall willfully, without authorization by the head of the department or agency by which such person was employed or in which he performed services at the time when he had custody of or access to or obtained knowledge of the above-described information or material, or if such department or agency is no longer in existence, without joint authorization by the Secretary of State, the Secretary of War, and the Secretary of the Navy, communicate, furnish, or transmit to another or publish any such information or material, shall be fined not more than \$10,000 or imprisoned not more than ten years or both.

Authorizations, as herein provided, shall be granted only in accordance with regulations prescribed by the President.

SEC. 2. Whoever, by virtue of his employment by or performance of services for any foreign government or by virtue of his service in the armed forces of any foreign government, having obtained, or having had custody of, access to, or knowledge of (1) any information concerning the nature, preparation, or use of any code, cipher, or cryptographic or cryptanalytical system of the United States; or (2) any information concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States for cryptographic or cryptanalytic purpose; or (3) any message, document, writing, note, paper, or the contents or meaning thereof, which has been, or purports to have been, prepared or transmitted in or by the use of any code, cipher, or cryptographic system of the United States; or (4) any information concerning the cryptographic or cryptanalytic activities of the United States; or (5) any information which has been or purports to have been derived from cryptanalysis of messages transmitted by the United States, shall willfully, without joint authmax

authorization by the Secretary of State, the Secretary of War, and the Secretary of the Navy communicate, furnish, or transmit to another or publish any such information or material, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

SEC. 3. The term "foreign government" as used herein includes any person or persons acting or purporting to act for or on behalf of any military or naval force, faction, party, department, agency, or bureau of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States.

SEC. 4. (a) The terms "code", "cipher", and "cryptographic" as used herein include any secret writing, deception, mechanical or electrical device, or other method used for the purpose of disguising or concealing the contents or the meaning of any communication.

(b) The term "cryptanalytic" as used herein includes all methods of interception and all methods of obtaining information of the contents of cryptographic communication.

SEC. 5. Nothing in this Act shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.