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16 March 1948

USCIB: 11/4

MEMORANDUM FOR MEMBERS OF USCICC:

Subject. Revision of Enclosures (A) and (B) to the Intelligence and Security Subcommittee Report on S-1019, dated 19 January 1948.

Reference. (a) Final Minutes of 49th Meeting of USCICC, held on 28 January 1948.
(b) Minutes of 50th Meeting of USCICC, held on 25 February 1948.

Enclosure. (A) Rewritten version of Enclosure (A) to the Intelligence and Security Subcommittee Report on S-1019, dated 19 January 1948.
(B) Rewritten version of Enclosure (B) to the Intelligence and Security Subcommittee Report on S-1019, dated 19 January 1948.
(C) Copy of comment received from Department of State representative.

1. In accordance with the decision reached at the time of the Forty-ninth Meeting of USCICC, members submitted comments on the subject report.
2. Certain of the comments recommending changes in the text of Enclosures (A) and/or (B) with the subject report have been used in the preparation of the attached revised versions.
3. Copies of the comments which suggested a divergent or modified plan of action are also enclosed herewith.
4. The enclosed material is forwarded for information and file, since further USCICC action has not been requested.
5. At the time of the Fiftieth Meeting of USCICC, it was agreed that the Coordinator would transmit the Committee's recommendation that the spokesman for USCIB at hearings on S-1019 use the "short" form of the justification, whether an "open" or "closed" hearing is held.


J. N. WENGER
Captain, U. S. Navy,
Coordinator of Joint Operations.

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Draft by Subcom.
on I & S.
19 January 1948

S. 1019/H.R. 2965

Statement in Justification

I am Rear Admiral Earl E. Stone, U.S. Navy, Chief of Naval Communications, in the Office of the Chief of Naval Operations. I request that my statement be taken in executive session and that it not be recorded in the public records of this committee.

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In matters concerning this bill I speak not only in my capacity as Chief of Naval Communications but also as the duly appointed spokesman of the Departments of State, the Army, the Navy, and the Air Force, and the Central Intelligence Agency, these being the joint sponsors of the bill in its present form.

This bill is straightforward in its intent. Its purpose is to fill a serious gap in existing laws which relate to the peacetime protection of information vital to the national defense and security. Specifically its purpose is two-fold, primarily, to insure the continuation of our sources of communication intelligence by protecting information about our operations in that field, and secondarily, to insure the maximum security of our own secret communications by protecting information about the means which we employ therein, that is, our own codes. 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

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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 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

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Enclosure (A)

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Statement in Justificationnot publish or hand over physically any code itself or a copy thereof or any message 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 accomplished, or are accomplishing in this field. Also, it is important to note that the Act of 10 June 1933 applies only 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. The Espionage Act of 1917 closes part of this gap but only an insignificant part since, under that Act, intent to injure the United States must be proved. 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

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profit in a monetary way, proceed to tell all about their wartime experiences (as others are doing, witness Captain Butcher's "My Three Years with Eisenhower", Captain Zacharias' "Secret Missions", Colonel Allen's "Lucky Forward"). Publication of information concerning our Communication Intelligence activities by people who fall in this category is just as disastrous as direct delivery, by secret agents, of the information to foreign governments. In any case communication intelligence information, as I shall presently explain, is peculiarly vulnerable to even the most indirect, roundabout, and piece-meal revelation. Any such revelation has the effect of injuring the United States. This bill attempts to close the gaps left by the Acts of 1917 and of 1933 insofar as information about codes is concerned, and, within that limited field, to improve what protection is afforded by these older Acts.

I particularly point out and emphasize that it is nowhere within the intent or purpose of this bill, in either its old or new forms, to prevent the legitimate revelation to the American public of the contents and substance of specific U.S. Government secret communications. In its original form as S.805 before the 79th Congress and as S.1019 (and H.R. 2965) before the first session of the 80th Congress this bill went further than it does now in its provisions for protecting our own codes in that it attempted to prevent the unauthorized publication of the contents

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and substance of our own secret communications. The purpose of this feature was not the establishment of a means that would make possible the hiding of information by the Executive Branch but simply the protection of the code systems employed for the transmission of the information, 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. However this feature, undoubtedly open to possible abuse, caused such suspicion and drew such opposition that the bill's chances of passage appeared to be microscopic. This is the reason why the bill was reconsidered by the sponsoring departments and agencies late in 1947 and revised to its present form with the objectionable feature omitted, with certain other features strengthened in view of that omission, and with its purpose and scope clearly stated and delimited.

This bill's secondary purpose, to protect our own code systems by protecting direct information about them (and indirect information about them acquired by covert means), requires, it is believed, little explanation. It is not difficult to defend a provision under which it shall be a crime to make available to foreign governments the means by which they can directly read our secret communications.

The bill's primary application, however, requires some explanation. There is no need here to explain what communication

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intelligence is or what its value can be. The Congressional Investigation of the Attack on Pearl Harbor brought out both points adequately. On page 232 of the report of that investigation appears this statement by the Committee. "All witnesses familiar with Magic material" (that is, communication intelligence) throughout the war have testified that it contributed enormously to the defeat of the enemy, greatly shortened the war, and saved many thousands of lives." In peacetime also the value of this intelligence source is incalculable because from no other source can the intentions of a potential enemy be so positively determined. The necessity of preserving this source is obvious.

Unfortunately communication intelligence is peculiarly sensitive to disclosure. When a foreign government using a code system learns that its system has been broken, it naturally, inevitably, and immediately changes the system. The perfect case in point is the change of Japanese diplomatic codes which shortly followed publication of Yardley's "American Black Chamber" in 1931, already mentioned. The foreign government does not need to learn categorically and specifically that one of its systems has been broken. All that it needs is to discover that we are aware of information which could have been acquired only (or even probably) from its coded messages, this is usually sufficient proof that it must change the system. It does so, and we are deprived, at least temporarily and perhaps permanently, of information from the message traffic involved.

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This closing off of an intelligence source is the direct and obvious result of disclosure of cryptanalytical success. It is, moreover, the only result which ultimately matters, and the damage involved is measured principally by the amount of intelligence lost and the duration of the intelligence blackout, but there are certain technical aspects of such a disclosure which should be considered, since they have an indirect effect on the seriousness of the damage.

If the reaction to a revelation of cryptanalytical success were always a change to another code of the same general type and complexity as the old one, the only damage would be.

- (1) the loss of intelligence during a more or less definite interval until the breaking of the new code, and
- (2) the more or less definite time, effort, and other expenditures involved in the study and solution of the new code by our cryptanalytical organizations.

Such losses are incurred in any case whenever the foreign government makes routine, periodical, precautionary changes in its code systems. These losses would be bad enough, but unfortunately, in practice, they do not represent all of the loss in a case of disclosure, since the new code, almost inevitably in such a case, is appreciably more complex and secure than the superseded one.

Nations and organization progress in the field of cryptography as they do in other fields, that is, usually by evolution. Because

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Because of natural human complacence and inertia, such progress, when normal and undisturbed, is usually gradual enough that it can be followed by a competent cryptanalytical organization with a minimum of difficulty. When, however, the success of our cryptanalytical organizations is disclosed, the foreign nation is made aware that the basic methods of its cryptography are unsound and, in the light of this knowledge, is forced into more or less drastic changes and advances in its methods. For us the continuity is broken and the difficulty of the task is increased many fold, in extreme cases the new problem is so far beyond us that we may never solve it. Thus, from the cryptanalysts' standpoint, while solution of a normal precautionary cryptographic change by a foreign government may entail merely a routine series of operations over largely well known ground, a revolutionary jump in technique induced by disclosures may project the attack into completely unknown territory, so that the hiatus in intelligence may be indefinitely protracted. Again, the best example of what can happen is taken from the "American Black Chamber" affair, after the appearance of this publication, all Japanese cryptography in general improved radically and it was obvious that the Japanese were devoting more study to cryptography than they ever had before. In 1934 they introduced their first diplomatic machine cipher, and from 1931 on the progressive improvements in their military systems rendered solution of these systems more and more difficult, each year. It is not far-fetched to suggest that our inability to

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decode the important Japanese military communications in the days immediately leading up to Pearl Harbor may be traceable directly back to the state of communication-security consciousness which Yardley's revelations had forced on Japanese officialdom a decade earlier.

Moreover there is no time limitation involved. Because of the very principle of continuity which is normal in undisturbed cryptographic evolution, it may be as damaging to let the foreign government know of old success as it is to disclose current success since, in the absence of intervening revolutionary advances, disclosure of the first leads to strong presumption of the second.

It should be pointed out that the bill attempts to protect only classified information in the stated categories and that the term "classified information" is, for this purpose, specifically limited to information restricted and withheld for reasons of national security. The sponsoring departments believe that this feature, originally included at the request of the U.S. Archivist for reasons having to do solely with his functions, is an ample safeguard of freedom of speech and of the press since, in any prosecution under the bill, the government would have to prove not only that the information involved was "classified" but that the classification had been imposed for reasons of national security. Obviously the government would never undertake a prosecution unless it could so prove and unless it could demonstrate

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that its reasons for the classification in the specific instance were reasonably well founded. Furthermore, it will be noted, the citizen who happens on "classified information" innocently, through channels independent of the government, and reveals it, is probably safe from conviction since he should be able to prove his ignorance of the classified status. It is only the person who knowingly possesses this classified information, acquired from the government either legitimately or clandestinely, over whom we wish to hold a club. This gap in our security is now wide open. It would be possible for a disloyal or disgruntled ex-official or ex-employee of one of our communication intelligence agencies, or even one who, with no actual malice, wished to profit from his "inside" knowledge by spreading it in a book or published article, to give away vital and ruinously revealing information with complete impunity under present laws. 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 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. In

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times like these, when, in the discharge of its responsibilities, the United States, a peace loving nation, faces the stark realities that exist in a semi-hostile world, protection of this vital information is something that should no longer be left to chance but should be covered by law. One of the recommendations of the Joint Congressional Committee for the Investigation of the Attack on Pearl Harbor (on page 253 of their report) was

"That effective steps be taken to insure that statutory or other restrictions do not operate to the benefit of an enemy or other forces inimical to the Nation's security and to the handicap of our own intelligence agencies. With this in mind, the Congress should give serious study to, among other things, **** legislation fully protecting the security of classified matter."

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---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. But in peacetime no such screen of general censorship is available or

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Statement in justification

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The bill's primary application, however, requires some explanation. There is no need here to explain what communication intelligence is or what its value can be. The Congressional Investigation of the Attack on Pearl Harbor brought out both points adequately. On page 232 of the report of that investigation appears this statement by the Committee "All witnesses familiar with Magic Material" (that is, communication intelligence) "throughout the war have testified that it contributed enormously to the defeat of the enemy, greatly shortened the war, and saved many thousands of lives " In peacetime also the value of this intelligence source is incalculable because from no other source can the intentions of a potential enemy be so positively determined. The necessity of preserving this source is obvious.

Unfortunately communication intelligence is peculiarly sensitive to disclosure. It is of its very essence that it must operate in secret. When a foreign government using a code system learns that its system has been broken, it naturally, inevitably,

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and immediately changes the system. The perfect case in point is the change of Japanese diplomatic codes which shortly followed publication of Yardley's "American Black Chamber" in 1931, already mentioned. The foreign government does not need to learn categorically and specifically that one of its systems has been broken; all that it needs is to discover that we are aware of information which could have been acquired only (or even probably) from its coded messages, this is usually sufficient proof that it must change the system. It does so, and we are deprived, at least temporarily and perhaps permanently, of information from the message traffic involved. Furthermore, because breaking other people's codes is difficult, time-consuming, and expensive work, we have lost more than intelligence, we have lost money and time and labor as well. These losses are all aggravated by the fact that the new code is almost inevitably more complex and secure than the old one, it may be, if the foreign cryptographers and their superiors are sufficiently impressed with our success and have learned their lesson well, that they may devise a code which we can never break, thus rendering our loss permanent. Again the best example of what can happen is taken from the "American Black Chamber" affair, after the appearance of this publication, all Japanese cryptography in general improved radically and it was obvious that the Japanese were devoting more study to cryptography than they ever had before. In 1934 they introduced their first

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It should be pointed out that the bill attempts to protect only classified information in the stated categories and that the term "classified information" is, for this purpose, specifically limited to information restricted and withheld for reasons of national security. The sponsoring departments believe that this feature, originally included at the request of the U.S. Archivist for reasons having to do solely with his functions, is an ample safeguard of freedom of speech and of the press since, in any prosecution under the bill, the government would have to prove not only that the information involved was "classified" but that the classification had been imposed for reasons of national security. Obviously the government would never undertake a prosecution unless it could so prove and unless it could demonstrate that its reasons for the classification in the specific instance were reasonably well founded. Furthermore, it will be noted, the citizen who happens on "classified information" innocently through channels

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independent of the government, and reveals it, is probably safe from conviction since he should be able to prove his ignorance of the classified status. It is only the person who knowingly possesses this classified information, acquired from the government either legitimately or clandestinely, over whom we wish to hold a club. This gap in our security is now wide open. It would be possible for a disloyal or disgruntled ex-official or ex-employee of one of our communication intelligence agencies, or even one who, with no actual malice, wished to profit from his "inside" knowledge by spreading it in a book or published article, to give away vital and ruinously revealing information with complete impunity under present laws. 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 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. In times like these, when, in the discharge of its responsibilities, the United States, a peace loving nation, faces the stark realities that exist in a semi-hostile world, protection of this vital information is something that should no longer be left to chance but should be covered by law. One of the recommendations

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of the Joint Congressional Committee for the Investigation of the
Attack on Pearl Harbor (on page 253 of their report) was:

"that effective steps be taken to insure that
statutory or other restrictions do not operate to the
benefit of an enemy or other forces inimical to the
Nation's security and to the handicap of our own intelli-
gence agencies. With this in mind, the Congress should
give serious study to, among other things, *** legislation
fully protecting the security of classified matter."

This bill is an attempt to provide just such legislation for only
a small category of classified matter -- a category which is both
vital and vulnerable to an almost unique degree.

Enclosure (B)

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DEPARTMENT OF STATE
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28 January 1948

MEMORANDUM FOR THE COORDINATOR OF JOINT OPERATIONS

SUBJECT Recommendations of I & S. Subcommittee re S/1019,
Concurrence in and Comments on.REFERENCE Special Report of I. & S. Subcommittee on subject
bill dated 19th inst.

The Department of State's representation on the Subcommittee concurs in the program and recommendations contained in paragraph 2 of the reference.

It might be of interest to note, however, a pertinent suggestion made by the member of the Department's Legislative Division to whom problems connected with the passage of S/1019 have been regularly referred. He, Mr. Marcy, believes that, whether open or closed sessions with the Judiciary Committees are obtained, it would be advisable to provide the Committees with extracts from the argument which could be freely used on the floor as ammunition for debate. This might forestall unfortunate and inadvertent revelations, and give the Congressional adherents of the bill, if any, a greater confidence in arguing its merits.

The suggestion put forward in the above paragraph would only be applicable, of course, if it is decided to allow the bill to proceed beyond discussion in camera, as explained in paragraph 2c of the reference. The Department is entirely in favor of withdrawal if the conditions are pre-judged as adverse.

/s/ Grant Manson
GRANT MANSON
Liaison Officer
Special Projects Staff

Enclosure (C)

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON 25, D. C.

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24 February 1948

MEMORANDUM FOR THE USCICC SECRETARIAT
SUBJECT Crypto Security Bill

1. The CIA is concerned over the risk to COMINT security which might attend the justification and passage of subject bill.
2. Regarding the "Statement in Justification" to be given in closed session, it is felt that throughout this statement, and on pages 5, 6 and 7 in particular, runs a philosophy of cryptanalysis that it is unwise to disclose.
3. It is further pointed out that even though these references be deleted, the members of Congress in closed session may feel free to ask questions, and to expect answers that will reveal much more than any statements contained in the justification. The cross-examination of justification witnesses on this bill will be not only within the rights of the Congressional Committee but they may feel it to be their obligation. Once the bill is presented to the Judiciary Committees substantial control of the discussions will be lost.
4. The practical usefulness of the bill, even if enacted, is also open to question. Prosecution under the bill may involve COMINT disclosures rendering such action inadvisable. The bill at best will be a deterrent, rather than an insurance, against revelations.
5. In view of these security risks, it is recommended that careful consideration be given by USCICC-USCIB in weighing the results to be obtained against the risks involved, with full realization that once the bill is in committee the ensuing discussion may get out of control. Thus our efforts to prevent "unauthorized disclosure" may result in leaving little to disclose.
6. The CIA Legislative Counsel is of the opinion that there is no hope for passage of this bill through the present Congress. The opinions of the legislative advisors of the other sponsoring departments are not known. It is suggested that their opinions on the success of the bill be carefully considered before steps are taken to present the bill to the Chairmen of the two Judiciary Committees. If the opinion of the legislative advisors is favorable and if USCIB decides to support the bill actively, it is suggested that the next step follow the recommendation of the USCICC subcommittee, and the bill be presented informally to the Chairmen of the

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MEMORANDUM FOR. THE USCICC SECRETARIAT

24 February 1948

SUBJECT Crypto Security Bill

two Judiciary Committees. Then "if the Chairmen of the two Judiciary Committees believe after discussion that the bill has little or no chance of passage, USCIB should give serious consideration to withdrawing the bill altogether for the present "

FOR THE DIRECTOR OF CENTRAL INTELLIGENCE

OGA



Chief, Advisory Council

Enclosure (D)

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