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Inc/S

16 October 1959

OGC Has Reviewed

MEMORANDUM FOR: Chief, Special Intelligence Staff, Office of Current Intelligence

SUBJECT: Security of Information

1. In connection with the material you left with me having to do with leaks of classified information to the press, I felt the following background information might be helpful.

2. This is a problem which has been with us for many years, and we have repeatedly reviewed the situation from the legal standpoint. We and others in the Government are continually reviewing the espionage and related acts and are attempting to evolve a formula which will give clear protection to classified information and yet be consistent with the Constitution and the evidentiary requirements. To date no truly satisfactory answer has been found. It was hoped that section 798 of Title 18 U. S. C. might be of some assistance in one restricted area, but this section has not been tested by an actual trial and we are dubious that it would be very helpful. In fact, we have grave doubts that in the Petersen case, with which you are familiar, the Government would have been able to produce in open court the evidence necessary for successful prosecution if Petersen had not pleaded guilty. The Nickerson case is a somewhat different problem but brought out the security aspects very clearly. In this connection it might be interesting to note the successful prosecution in the so-called ISIS case last year in England. This was prosecuted under the Official Secrets Act, and it would be well to keep in mind that such a prosecution is based on a theory entirely different from that of our espionage laws and that English procedures permit in camera proceedings under certain circumstances which are not permissible in criminal cases in our courts. It is the consensus of Government lawyers that the Official Secrets Act and its attendant procedures would probably be held unconstitutional by our courts.

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3. A joint study of the espionage acts was undertaken by G-2, ONI, and the FBI in 1946, but no fundamental change was made. In 1947, section 798 was added to Title 18 U.S.C. The Internal Security Act of 1950 closed up some minor loopholes and provided a separate penalty for conspiracy to violate the basic act. Another formal attempt to strengthen the laws concerned with security began in 1952 when a draft bill was submitted which was not acted on by the Congress. At this time the Department of Defense stated a view that the difficulty was not with the laws but there was not a "focal point from which the insistence on prosecution should have come after the offenses were committed, because, being isolated from regular /Department of/ Justice supervision, or being seemingly little leaks here and there outside normal Justice fields of endeavor, and sometimes being accidental leaks by quite important Government officials, there just was nobody to push for prosecution." The Commission on Government Security, created in 1955, made its report on 21 June 1957 and recommended making it a crime to disclose without authorization classified information knowing it to have been so classified. The Congress is still studying this recommendation. We have made a variety of suggestions to the Department of Justice but none has been acted upon, and we cannot claim that they really hold much hope of improving the situation.

4. In February 1958, as a result of one particular newspaper story, a meeting was held in the White House with the Special Counsel to the President and representatives of Justice, Defense, Bureau of the Budget, and this Agency. The consensus was that it would be politically impossible to obtain legislation which would provide for punitive measures against the press and magazines for publishing leaked security information, but that efforts should be made to strengthen legislation pertaining to employees and ex-employees. It was also agreed that recommendations of the Commission on Government Security were not suitable as drafted. To my knowledge no concrete action has followed this meeting.

5. We are currently discussing with the Department of Justice a proposal which might be of some use in those cases where the employee or ex-employee who actually leaked the information could be clearly identified. At present there is a section of the Internal Security Act (50 U.S.C. 783(b)) which makes it a crime for any employee to communicate classified information to any person whom the employee knows or has reason to believe to be

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an agent or representative of any foreign government or an officer or member of any communist organization. We are suggesting that this could be broadened to make it a crime for any employee or ex-employee to reveal information he knows to be classified to any other person he knows or has reason to believe is not entitled to receive such classified information. To date the Department of Justice is doubtful as to whether such legislation could be obtained.

6. If the foregoing is of interest, I would be glad to discuss the problem in greater detail with you and those who are working with you on it.

S/ Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel

cc: DCI
~~LD~~DCI
Deputy Director of Security

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MEMORANDUM FOR: THE DIRECTOR

The attached was prepared for [redacted] and the Security Subcommittee of USIB to give them the general background of the problem of taking legal action in the event of leaks of classified information. This will lead into detailed discussions as to what legislation may be feasible. Our best information is that Justice will not at this time propose any new legislation but does not object and is even somewhat in favor of our going ahead as representing the intelligence community and sounding out our own committees on various legislative proposals.

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S/ Lawrence R. Houston 16 October 1959

LAWRENCE R. HOUSTON (DATE)
General Counsel

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

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