Executive Registry
5-4555

APR 14 1954

MEMORANDUM FOR: General Counsel

THRU: Acting Deputy Director (Administration)

SUBJECT: Proposed Draft of Bill Relating to Protection of Defense Facilities from Sabotage and Espionage

REFERENCE: Memo from Legislative Counsel to D/S dtd 5 April 54 - Subject as Above

1. The reference requested comments of this Office concerning the draft bill relating to protection of defense facilities from sabotage and espionage.

2. At the present time the classified procurement program of this Agency is protected under a system of security clearances of employees of contractors engaged on work being performed for CIA under a classified contract. In the event CIA fails to clear an employee of a private contractor for classified information, two recourses are open to the contractor; namely, (1) he may place the employee on unclassified work or (2) if this is not feasible, the Agency may cancel the contract.

3. It is recognized, however, in time of national emergency many private plants will be working almost exclusively on classified contracts of the U. S. Government. Employers will find it difficult, if not impossible, to segregate an individual employee on unclassified work. Under these circumstances it would be of benefit to this Agency to have a procedure in effect under the proposed draft bill which would remove an employee of a private contractor from working on classified contracts originated by this Agency.

FOIAb6

[redacted]

Sheffield Edwards
Director of Security

Encl.
Draft Bill dtd
25 March 54

5 April 1954

MEMORANDUM FOR THE DIRECTOR OF SECURITY

Attached herewith is a draft bill relating to protection of defense facilities from sabotage and espionage. This draft has been prepared by the Department of Justice, which has submitted it to the Bureau of the Budget for comment. The Bureau has requested an expression of our views on this bill and I am forwarding it to you, together with an explanation of the proposed bill, for any comments you might care to make. It is primarily a concern to agencies other than ours. Would you please return any comments through DD/A to reach me by 15 April so that I may reply to the Bureau of the Budget.

Walter L. Pforzheimer
Legislative Counsel

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON 25, D. C.

April 1, 1954

My dear Mr. Dulles:

Pursuant to provisions of Budget Circular A-19, and the delegation of authority from the President referred to therein, the Bureau of the Budget has received a communication regarding the following legislative proposal:

Draft bill submitted by Justice relating to Protection of Defense Facilities from Sabotage and Espionage.

Before advising the submitting agency of the relationship of the proposal to the program of the President, the Director of the Bureau of the Budget would appreciate receiving an expression of your views with respect thereto.

It would be appreciated if your reply could be received by Since Budget Bureau has been directed to complete action on this draft by 4/28/54, it is very important that your views be received prior to 4/23/54.

If it is desired to confer on this matter, please communicate with E. A. Radley, Bureau of the Budget, 17th and Pennsylvania Avenue, N.W., telephone Code 189, Branch 423.

In addition to your agency, requests for views have been transmitted to the following agencies:

FCDA, FMCS, NMB, NLRB, ODM, AEC, CSC, SBA, Subversive Activities Control Board, Defense, State, Commerce, Treasury, Interior, Labor.

Sincerely yours,

Roger W. Jones

Roger W. Jones
Assistant Director,
Legislative Reference

Honorable Allen W. Dulles
Director
Central Intelligence Agency
Washington 25, D. C.

Att: Mr. Walter L. Pforzheimer
302 So. Bldg., 2430 E St., N.W.

Enc. Copy draft bill & explanation

March 25, 1954

DRAFT BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) The history of modern warfare has established that the defense of any country is greatly dependent upon the effective and continued operation of its civilian economy and the full utilization of its productive capacity. In time of war or of preparation for defense from attack by a potential aggressor, injury to the civilian economy or impairment of the productive capacity of a country may severely curtail its military effectiveness, and such injury or impairment has become a major objective of aggressor nations in the preparation for and prosecution of war.

(b) There exists in the United States a limited number of individuals as to whom there is reasonable ground to believe they may engage in sabotage of the civilian economy and productive capacity of the United States, espionage, or other subversive acts, in the event of actual or threatened war, invasion, insurrection, or serious disturbance of international relations.

(c) In such circumstances it is essential that such individuals be barred from access to facilities injury to which would be harmful to the civilian economy and productive capacity of the United States, and, therefore, to its military effectiveness.

Sec. 2 (a). Whenever the President finds (i) that the security of the United States is endangered by reason of actual or threatened war, invasion, insurrection, or serious disturbance of international

relations, and (ii) that its military effectiveness may be impaired by acts of sabotage, espionage, or other subversive acts affecting its civilian economy or productive capacity, the President is authorized to institute such measures and issue such rules and regulations as may be necessary to bar from access to defense facilities individuals as to whom there is reasonable ground to believe they may engage in sabotage, espionage, or other subversive acts. The President may perform any function vested in him by this Act through or with the aid of such officers or agencies as he may designate.

(b) Except as provided in subsection (c) of this section, no measure instituted, or rule or regulation issued, pursuant to subsection (a) of this section shall operate to deprive any individual of access to or employment on or in connection with any defense facility or facilities unless such individual shall first have been notified of the charges against him and given an adequate opportunity to defend himself against such charges. Such opportunity shall include an expeditious hearing, if the individual so desires, and the charges shall be sufficiently specific to permit the individual to respond to them; provided, however, that nothing contained in this Act shall be deemed to require any investigatory organization of the United States Government to disclose its informants or other information which in its judgment would endanger its investigatory activity. Nor shall the Administrative Procedure Act be applicable to proceedings under this Act.

(c) The measures instituted, or rules or regulations issued, pursuant to subsection (a) hereof may operate to bar summarily any individual from access to or employment on or in connection with any defense facility, provided that such individual shall be notified in writing of the charges against him within fifteen days from the time he is so barred and given an adequate opportunity to defend himself against such charges, including, if he so requests, a hearing within thirty days of the date of such request. Reasonable continuances may, however, be permitted if both parties to the proceeding concur. A determination shall be made and transmitted to the individual affected within thirty days from the date of the termination of the hearing or if no hearing is requested, of the submission of the individual's defense to the charges. If administrative appellate proceedings are provided by the rules or regulations they shall be expeditiously determined. In the event that the summary bar against such individual is removed as a result of any proceeding, the individual shall be compensated by the United States for his loss of income during the period he was so barred.

(d) As used in this section the term "defense facility" has the same meaning as it has in Title I of the Internal Security Act of 1950, as amended, but shall not include vessels, piers, or waterfront facilities.

Sec. 3. Whoever wilfully violates any rule, regulation, or order issued pursuant to the provisions of this Act, or knowingly

obstructs or interferes with the exercise of any power conferred by this Act shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

EXPLANATION OF THE PROPOSED BILL

The purpose of the proposed bill is to provide the Federal government with legal authority not presently existing to bar from access to certain facilities the limited number of individuals who are subversive. It is understood that a definite number of such individuals has already been identified. Some of these individuals are known to be employed in facilities, sabotage of which in time of war or threatened war would seriously impair the military effectiveness of the United States.

The facilities involved are privately-owned and are primarily engaged in what is regarded as normal civilian production, for example, power plants, producers of basic materials required by defense contractors, and the like. It is obvious that sabotage of such facilities could materially curtail the production of war materials. The possibility of espionage in this area is also a factor. Although there is authority for barring subversive individuals from facilities directly engaged in the performance of defense contracts, there is no similar authority with respect to the facilities here involved, except as to vessels, piers, and waterfront facilities. As to the latter, the Magnuson Act (50 U.S.C 191) furnishes exclusionary authority.

The Magnuson Act has served as a model for the proposed bill. Although the bill has a potentially broader coverage than

the Magnuson Act, by reason of the procedures provided by the bill its operations will in fact be confined to the screening of a relatively small number of persons.

SECTION 1

Section 1 is a statement of legislative policy. Subsection (a) recites the well-known dependence of the military effectiveness of any country upon its civilian economy and productive capacity, and the fact that injury or impairment or such economy and capacity has become a major objective of aggressor nations. Subsection (b) contains a finding that there exists in the United States a limited number of subversive individuals as to whom there is reasonable ground to believe they may engaged in sabotage or espionage in the event of actual or threatened war serious disturbance of international relations, invasion, or insurrection. Subsection (c) recites the necessity of barring such individuals from access to facilities injury to which would be harmful to this country's civilian economy and productive capacity, and therefore to its military effectiveness.

SECTION 2

This section authorizes the President to take the necessary measures to protect the facilities in question from sabotage and espionage within a framework satisfying requirements of due process

and with as little inconvenience to both employers and employees as the circumstances permit. Subsection (a) contemplates that the President will take appropriate steps under the conditions specified. These conditions are two-fold: First, that the security of the United States is endangered by reason of actual or threatened war, invasion, insurrection, or serious disturbance of international relations, and second, that the military effectiveness of the United States may be impaired by acts of sabotage, espionage, or other subversive acts affecting its civilian economy or productive capacity.

Subsection (a) contains a customary provision authorizing the President to act through subordinate officials. He may entrust administration of the Act to a single official or divide it among several, as he sees fit. It is anticipated that the Act will be put into effect by the issuance of an Executive order reciting the conditions mentioned above and naming an official or officials who shall take the necessary steps to accomplish its objectives. These steps would include the issuance of rules and regulations consistent with the limitations of subsections (b) and (c) of section 2.

Subsection (b) provides that, except as authorized in subsection (c), no measure or rule or regulation shall operate to bar an individual from access to or employment on or in connection with a defense facility (as later defined) unless he shall have first been notified of the charges against him and given an opportunity to defend himself against such charges. He is to be granted

an expeditious hearing if he requests it, and the charges are to be sufficiently specific so as to permit him to respond to them. However, no hearings under the Act require any Government investigative organization to disclose its informants or other information which in its judgment would endanger its investigatory activity. The combination of charges specific enough to enable a defense to be made and protection of security information would, on the basis of recent decisions involving the Magnuson Act, meet the requirements of due process. United States v. Gray, 207 F (2d) 237, 241-242 (C.A. 9th, 1953); Parker v. Lester, 112 F. Supp. 433, 443-444 (N.D. Calif., 1953). See also United States v. Nugent, 346 U.S. 1, involving hearing procedures under the Selective Service Act.

Failure to afford an opportunity to cross-examine confidential informants would, however, probably be inconsistent with section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). Accordingly, Section 2(b) expressly provides that the Administrative Procedure Act shall not be applicable to proceedings under the bill.

Section 2(c) authorizes the summary suspension of individuals from access to defense facilities without prior charges or hearing. However, if such a procedure is followed the individual involved must be notified of the charges against him within fifteen days, and, if he requests it, must be granted a hearing within thirty days, from the time he is barred. A determination must be made and transmitted to him within thirty days from the date of

termination of the hearing or, if no hearing is requested, of the individual's submission of his defense to the charges. The subsection provides that administrative appellate proceedings, if made available, shall be determined expeditiously. However, it should be noted that neither subsection (c) nor any other part of the Act requires administrative appeals. Whether or not they will be provided will depend upon the discretion of the officials administering the Act. It is not believed that absence of an administrative appeal presents any constitutional problem.

It should be emphasized at this point that the requirement of specific charges and hearings either before an employee is barred (subsection (b)) or, if summarily barred, immediately thereafter (subsection (c)), is intended to prevent any procedure involving the screening of the general body of civilian employees or placing a burden upon them to prove their loyalty. However, the procedure is believed to be adequate to eliminate the known subversives expeditiously.

Finally, subsection (c) provides for compensation by the United States for the loss of income resulting to anyone barred from employment without a prior hearing and thereafter cleared. The inherent fairness of such a provision and its desirability from the standpoint of due process are self-evident.

Subsection (d) provides that the term "defense facility" shall have the same meaning as it has in Title I of the Internal

Security Act of 1950. Section 3 (7) of Title I of that Act (50 U.S.C. 782(7)) defines the term "facility" broadly, and the term "defense facility" as a facility designated and proclaimed by the Secretary of Defense pursuant to section 5(b) of Title I (50 U.S.C. 784(b)) and included on the list published and currently in effect thereunder. Section 5(b) directs the Secretary of Defense to designate and proclaim a list of "defense facilities" with respect to which he finds and determines that the security of the United States requires the exclusion of members of Communist organizations; such list must be published in the Federal Register and the management of any listed facility notified. The management must post notice of designation in such a manner as to give reasonable notice thereof to all employees and applicants for employment.

The proposed bill, therefore, contemplates the publication of a list of defense facilities. It has been suggested that such publication might be unwise for security reasons. Use of a secret list has been suggested as an alternative. However, without such publication individuals barred from defense facilities would have no way of knowing where they could and could not be employed. This would appear to raise a serious question of due process.

In addition, the Internal Security Act now authorizes and directs the Secretary of Defense to publish a list of defense facilities. Such a list has been prepared but has not been divulged, because no final order has yet been issued under the Internal

Security Act against any Communist organization. Until such an order is entered publication of the list would serve no purpose under the Internal Security Act. However, at such time as a final order is issued the list must be published. Accordingly use of the list in the proposed bill might hasten its publication, but would in itself impose no new requirement for the preparation and issuance of a list.

Section 3

This section authorizes the imposition of penal sanctions for wilful violations of any regulation, rule, or order issued pursuant to the Act or for knowing obstructions or interference with the exercise of any power conferred by the Act. Such offenses are made punishable by a fine of not more than $10,000 or by imprisonment for not more than five years or both. The penalties provided by the Magnuson Act for violations thereof are imprisonment for not more than ten years, and, within the discretion of the court, a fine of not more than $10,000 (50 U.S.C. 192). On the other hand, lesser penalties are provided by the Internal Security Act for similar offenses. Under that Act it would appear that violation of any of its provisions which would have the effect of barring members of Communist action organizations from defense facilities (50 U.S.C. 784) is punishable by a fine of not more than $10,000, or imprisnnment for not more than five years, or both (50 U.S.C. 794(c)). It is believed that such penalties are adequate punishment for violation of the proposed Act.