

18 September 1944

MEMORANDUM for Mr. William F. Friedman:

1. The following comments are submitted on the enclosed memorandum.

2. It is concluded that all but one of the problems raised have received adequate attention and will be solved as far as possible if present efforts to procure legislation are successful.

3. The problem of litigating prosecution under the Espionage Act or under the proposed law mentioned above not having received attention hitherto, an informal investigation of this subject was made and the following information obtained.

4. Sources of information in the Department of Justice disclosed that the problem has been met by government prosecuting attorneys in two ways:

(a) The first is to limit as closely as possible the number of persons connected in any way with the trial of a case involving classified information, to investigate these persons as far as possible in the time available and to procure a court order safeguarding the records containing references to such information. This, however, is only partially effective since there are limited controls available to the prosecutor in selecting personnel to be connected with the trial. These controls include challenges to the jury, change of venue, and persuasive action upon the attorneys representing the defense to limit the number of persons having access to the classified information.

(b) The second and more successful method of safeguarding classified information in a case enforcing a law against its disclosure is to use tactics which avoid placing the information in the record or before the court. This may be done in several ways. In case of an offense involving disclosure of information contained in documents which are removed from their official files, for example, a prosecution under Section 88 of the United States Criminal Code for unauthorized possession of government documents, involving proof only of the fact that the document was an official government document, and not of its

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