

ARLINGTON STATION

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Date 16 May 44

TO Lieut. Tomkins - A 114 FROM NA

- Commanding Officer
- Asst Commandant
- Dir Of Com. Research
- Administrative Officer
- Asst Admin Officer
- Adjutant
- Asst Adjutant
- Chief, Admin Branch
- Info. & Liaison Branch
- Chief, A Branch
- Chief, B Branch
- Chief, C Branch
- Chief, D Branch
- Chief, E Branch
- Chief, F Branch
- Chief, G Branch
- 2d Sig Serv. Bn.
- Dir. of Training
- Property Officer
- Intelligence Officer
- Personnel Officer
- Provost Marshal
- Post Engineer
- Classified Mail Room
- Secretary to C O
- General Files
- 201 Files

- Comments and Return
- Recommendations
- Information and Return
- Information and Forwarding
- Information and File
- Signature, if approved
- See Note on Back
- As Requested
- As Discussed
- Your Action

This came in right after our talk this morning.

I suggest:

- ① Show + discuss this with Capt. Donald
- ② Get together with

if he feels that it would be well to prepare a draft of proposed legislation, or is directed to do so by Cndr. Wenger, ~~then~~ work together with him on it and in that way both services will have identical drafts. What we do with the draft will be decided subsequently.

Please return these papers to me.

F.

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ARLINGTON HALL STATION

Date 13 May 44TOFROM

Commanding Officer
 Asst. Commandant
 Dir. of Com Research
 Administrative Officer
 Asst Admin Officer
 Adjutant
 Asst. Adjutant
 Chief, Admin Branch
 Info & Liaison Branch
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 As Discussed
 Your Action

Wenger told me Thursday
 pm that he had sent
 this doc to their
 Legal Branch in DP-20
 (Cdr Willenbacher)
 to you the ~~SECRET~~ we
 had sent this to

Col Snow? I don't
 as yet — let's wait
 until more develops.
 OK?

J.
 I see, want until
 in agreement
 with Navy on legislation.
 "j"

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ARLINGTON HALL STATION

Date 10 May 44TOFROM

Commanding Officer *PC*
 Asst Commandant *PC*
 Dir Of Com. Research *PC*
 Administrative Officer
 Asst Admin Officer
 adjutant
 Asst. Adjutant
 Chief, Admin Branch
 Info & Liaison Branch
 Chief, A Branch
 Chief, B Branch
 Chief, C Branch
 Chief, D Branch
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 As Discussed
 Your Action

This conference was arranged
 after discussion between
 Weiger + myself, after you
 + I had some talk about
 new legislation

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J.

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Conference for Proposed Legislation Against
Unauthorized Dissemination of Communication
Intelligence

Present. Lt. (JG) John V. Connorton, USNR
Lt. Floyd Tomkins, AUS

Place of Conference

1. The conference was held at 1100 on Wednesday, 3 May 1944 at the Naval Communication Annex.

Preliminary Agreements

2. A discussion of the problems involved led to an agreement on several general points, which will be applicable to all other conferences on the same subject:
- A. All minutes, documents and information resulting from the conferences will be classified as Secret.
 - B. Minutes of each conference will be kept for the information of higher authorities.
 - C. Higher authorities of both Army and Navy have concurred as to the need for a law incorporating some of the general principles under discussion.
 - D. The present problem of the conferees is not to procure personally the passage of a proposed law by legislative authorities. The present responsibility is first, to outline the need for such a law to the proper higher authorities, and second, to draw up a proposed draft of a law which would penalize, and prevent if possible, the unauthorized dissemination of communication intelligence.
 - E. In developing the background for the final report for the perusal of higher authorities, Lieutenant Connorton will supply the historical details and Lieutenant Tomkins will center his attention on the legal aspects of the report. However, the final report will be the result of cooperative effort on both aspects.

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- F. The final report should include a list of recommendations concerning the security precautions to be followed when demobilizing personnel at the end of the war.

Opportune Time

3. It was felt that this was an opportune time to discuss the situation and draw up tentative plans for legislation since post-war plans were being made by most governmental agencies. In addition, Congress had just established a new Military Committee to discuss such plans. It is important that the usually drawn-out procedure of establishing the need for a law and having it passed be finished before the end of the war and the demobilization of our personnel begins.

4. It was agreed that several problems were involved, all of which might be solved by one bill or by a series of related bills. The decision to advocate one bill or several bills would be predicated on various circumstances, such as the views of higher authorities, the attitude of Congress, support of the Military Committee, etc. The problems involved were as follows:

- (a) Prevention of Army and Navy cryptographic or cryptanalytical personnel from discussing their activities either at this time or in the future.
- (b) Prevention of unauthorized dissemination of information relating to communication intelligence by military personnel not engaged in cryptographic or cryptanalytical activities, but who have acquired knowledge of this activity through their official positions.
- (c) Prevention of civilians, journalists, war correspondents, etc., who may have acquired knowledge of cryptographic or cryptanalytical activities either through their official position or by any other means.

Objectives of the Proposed Legislation

5. An effort was made to fix the problem in terms of the number of persons involved and the type of persons to whom the law would be applicable. It was decided to ascertain the ap-

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proximate number of persons who were either involved in the processing operations of communication intelligence or who received this intelligence. Though such personnel statistics would necessarily be kept secret, it was felt that a knowledge of the number of persons involved would be of value to authorities responsible for the submission of the bill to Congress. In any event, approximate figures would be acceptable for a basis of discussion.

6. There are two aspects of the above problems - first, to prevent publicity leaks, and second, to penalize them. From a cryptanalytical viewpoint, there is little use, aside from deterring others in the future, in punishing a publicity leak since irrevocable damage has already been done. However, the existence of a strong law against revealing such information will help to cut down future publicity.

A possible solution would be to have the Military Committee ask for the continuance of military censorship during the emergency period after the war for supervision of stories, books, etc. dealing with military intelligence. Thus, no book or newspaper story relating to military intelligence could be published without the permission of the Army or Navy. In view of the current loud cries in Congress against censorship, this would be a difficult bill to have passed. Yet if the Military Committee could be persuaded of its value to the welfare of our country, Congress would probably pass it. Since Congress will support a strong Army and Navy for post-war times, and will desire proper military intelligence, it will probably favor such a bill, if properly presented.

Deficiencies of Present Legislation

7. The laws on the books at present seemingly do not solve these problems although penalties for espionage have been provided by the Espionage Act. Therefore, the question of spies did not have to be discussed. The principal difficulty with the present Espionage Act is that to secure a conviction it is necessary to prove on the part of the accused the intent to injure the United States, or reason to believe that such injury will result. Therefore, Yardley's book or the Chicago Tribune's Battle of Midway story could scarcely be penalized under this provision. Another Act of June 10, 1943, which was passed to stop Yardley's second book, states that a person "wilfully" publishing or furnishing to another any official diplomatic code which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United States may be punished. This law does

1933
34?
See
47 USC Sec. 60
(1934)

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not cover military ciphers or codes.

Tentative Proposal for New Legislation

8. In view of the foregoing, it was decided to study various points which should be included in a tentative draft of the new law.

- (A) The phrase "intent to injure the United States" should be eliminated since this could scarcely be proven against any of our personnel who revealed information to other than a foreign spy. It would be difficult to prove a case against a journalist who might write a very revealing story of our cryptanalytical activities under the pretext of protecting the United States. Congress' possible disinclination to penalize unintentional disclosures of our activities may oppose the omission of the phrase "intent to injure the United States". Furthermore, it is doubtful whether Army or Navy authorities would care to prosecute in cases where inadvertent publicity resulted. However, something should be done to prevent deliberately sought-for publicity, such as Yardley's, which disclosed our activities.
- (B) The elimination of the "intent" phrase would automatically reduce the crime to a misdemeanor since intent is necessary for felony.
- (C) The suggested penalty for unauthorized dissemination or publication of communication intelligence was a two-year prison sentence at the maximum, or a fine, or both. This punishment is in accordance with the British Official Secrets Act which is to be studied as a possible model for a tentative draft for American legislation.

Next Conference

9. Another conference will be held in the very near future to discuss the following points:

- (1) Conclusions arrived at from a study of certain documents.
- (2) A list of the agencies and the number of individuals involved in cryptanalytical activity or re-

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ceiving communication intelligence.

- (3) The interpretation of the phrase "wilfully" in the Diplomatic Code Act of June 10, 1943.

Conferees

John V. Connorton
Lt. (jg) John V. Connorton, USNR

Floyd W. Tomkins, jr.
Lt. Floyd Tomkins, AUS

APPROVED.

William F. Friedman
William F. Friedman

Jos. N. Wenger
Comdr. Jos. N. Wenger, USN