ENCRYPTION BILL: AN EXERCISE IN DECEPTION

HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 25, 1997

Ms. LOFGREN. Mr. Speaker, last week the Senate Commerce Committee reported a bill, S. 909, sponsored by Senators MCCAIN and KERREY, which largely embodies the latest administration proposals to deal with encryption technology. This misguided legislation (S. 909) would be a great leap backward in the effort to reform current American export restrictions on encryption and remove serious impediments to the competitiveness of our Nation's high-tech industry.

In addition, by proposing unprecedented domestic controls on the use of encryption, the McCain-Kerrey bill also poses serious threats to fundamental civil liberties and privacy rights. I believe that the Senate effort is propelled largely by a lack of understanding of both the worldwide prevalence of strong encryption and the technical challenges posed by the massive key recovery-escrow infrastructure envisioned in the bill.

Earlier this week, Mr. Dan Gillmore, columnist for the San Jose Mercury News discussed the problems with S. 909 and strongly urged a rejection of the McCain-Kerrey approach. I submit his column into the CONGRESSIONAL RECORD.

[From the San Jose Mercury News, June 23, 1997]

ENCRYPTION BILL: FEDERAL EXERCISE IN SELF-DECEPTION

(By Dan Gillmor)

As a bill bearing his name zipped last week through the Senate Commerce Committee he heads, Arizona Republican John McCain said, ''This bill carefully seeks to balance the concerns of law enforcement with individual privacy concerns.''

The legislation, co-sponsored by Nebraska Democrat Bob Kerrey and two other Democrats, was the latest futile attempt in Congress to achieve the impossible: compromise on an issue that fundamentally has no middle ground.

The issue is encryption, the scrambling of digital information. Try as they might, lawmakers must eventually understand the reality. When it comes to the privacy of personal information in the digital age, we have two simple choices. Either we allow people to encrypt their messages, using scrambling and unscrambling ''keys'' to which only they have access, or we do not.

Governments are certain that bad people will use encryption to help achieve bad ends. They're right. But their cure would shred our basic liberties.

So the Clinton administration and its allies—the McCain-Kerrey legislation is widely viewed as an administration-approved plan—are pushing a policy that would force us to put descrambling keys in the hands of third parties. Then, when law enforcement people wanted to see our communications, they'd simply get the keys from that third party.

The McCain-Kerrey bill pretends to stop short of that. It would force government agencies to use only electronic hardware and software that included this key-recovery scheme. It would also require the same system for anyone using a network that is funded in any way by federal funds, including virtually all university networks.

While one section calls the system ''voluntary'' for private individuals, the rest of the legislation would make it all but impossible to resist. Hardware and software companies, which so far have resisted the government's moves, will be much more likely to simply give in and build this key-recovery method into all of their products if they have to build it into ones bought by the government. Consumers need options, not monolithic products.

Another section of the bill would, in effect, require even private citizens to use such software—and therefore give their keys to the third parties—if they want to buy anything online. People tend to use what they have in front of them.

There's nothing wrong with the idea of letting a third party hold onto a descrambling key in certain cases. As former White House official Jock Gill noted recently on an Internet mailing list, all government communications should use such a system so the public can keep an eye on what the government is doing in our name and with our money. We'll need to create a system, of course, where such oversight doesn't end up forcing the public to use exactly the same technology for its own encryption needs—or at least keep private keys out of the hands of centralized third parties.

Companies, meanwhile, will need to hold onto the business-related keys of employees, so that vital records won't be lost when someone leaves or dies. But I can't think of many companies that will be happy about giving the vault keys to third parties they can't control.

Private citizens also should consider giving their keys to trusted third parties, just as they give their house keys to neighbors when on vacation trips. I intend to do just that—but it's none of the government's business who gets my personal encryption key. I need strong encryption, as the digital age arrives, because more and more of my life will exist on these public networks.

The practical difficulties of setting up a centralized key-recovery system are immense. Even if it could be done, I would never trust such a government-run system to be even remotely secure from corruption. I remember the Social Security employees who sold personal information to outsiders. I've also seen too much evidence that governments tend to abuse liberties when they have too much power—and the McCain-Kerrey bill would allow virtually anyone at any level of law enforcement to have access to private information on the flimsiest pretext, not even requiring a court order.

Kerrey's participation in this latest travesty is sad. He needs no lessons in courage. He lost part of a leg in Vietnam. Later, as he stood up to the know-nothings who would ban flag-burning, he noted that our strength comes partly from our ability to express ourselves even in ways that offend many others.

Now, however, Kerrey is aligning himself with a much more dangerous crowd of know-nothings: those who'd ban our right to keep private information private. He may believe this is about finding common ground; if so, someone has fed him falsehoods. His proposal, if enacted, would create the worst invasion of our fundamental liberty in many decades.

If you care even slightly about your privacy in the future, pick up a pen today and write your Senators and member of the House of Representatives. Tell them to reject the Clinton-McCain-Kerrey approach. Tell them you value your privacy and won't give it up without a fight. And remind them that you vote.

A TRIBUTE TO SAN DIEGO POSTAL EMPLOYEES

HON. RANDY ''DUKE'' CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 25, 1997

Mr. CUNNINGHAM. Mr. Speaker, I rise once again to pay tribute to the U.S. Postal Service employees of San Diego. Again, a survey, conducted by Price Waterhouse, has confirmed that 95 percent of all letters mailed to and from Dan Diego arrived on time. This places San Diego mail carriers second best in the Nation; 1 percentage point behind first place.

The Postal Service employees of San Diego should be proud of their excellent service. While the national slogan for the Postal Service is ''We Deliver,'' San Diego postal employees say, ''We deliver on time'' and this survey proves that they do.

I want to personally recognize San Diego District Manager Danny Jackson, the Margaret L. Sellers Processing and Distribution Center Manager Thomas Wilson, and the San Diego Postmaster Glenn Crouch. Along with every postal employee in San Diego, they have the right to be proud of their accomplishments. They have once again brought national recognition to San Diego and enhanced our reputation as America's finest city.

Every San Diegan should join me in expressing gratitude to our Postal Service employees in San Diego and their commitment to be the best of the best.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1998

SPEECH OF

HON. DOC HASTINGS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Monday, June 23, 1997

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 1119) to authorize appropriations for fiscal years 1998 and 1999 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal years 1998 and 1999, and for other purposes.

Mr. HASTINGS of Washington. Mr. Chairman, I have been working closely with Mr. HALL to clarify the terms and conditions of Department of Energy property transfers. In Washington State, economic development activities are largely undertaken by ports. However, the Department has been unclear as to whether ports are eligible to apply for surplus Department of Energy property. I am pleased that the guidelines established pursuant to the Hall amendment will address these issues.

Past Congresses have set up a series of provisions which govern the transfer of Federal Government property to other agencies, to local governments, or to economic development organizations. A special provision was created for Department of Energy waste cleanup sites, which frequently are contaminated, or near contaminated areas.

By allowing the Government to transfer unproductive properties, the taxpayer will benefit by eliminating costly maintenance and security