

OGC HAS REVIEWED.

SECURITY LECTURE

1. Specific SSU security regulations have been pointed out to you. In addition, obligations will be imposed on you by the taking of the oath of office in which you will pledge your honor and integrity to the support of the law regarding the dissemination of information affecting the national defense and the national interest. It is now deemed desirable to point out to you specific provisions of the law on this subject. The principle act is the Espionage Act of 15 June 1917, 50 U.S.C. 31. The oath of office which you will be required to sign states that you have read and understand sections 1 and 2 of this Act which correspond to Sections 31 and 32 of Title 50 U.S.Code. It is our purpose to assist you in understanding the provisions of this Act.

2. Section 1 (a) of the Act provides in part that whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, fort, etc., or any place connected with the national defense, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years or both.

3. Section 1 (b) provides that whoever for the <sup>SAME</sup> purpose ~~aforsaid~~, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts, or induces or aids

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another to copy, take, make, or obtain, any sketch, photograph, writing, or note of anything connected with the national defense, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years or both.

4. Section 2 (a) provides in part that whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, thereof, either directly or indirectly, any document, writing, code book, etc., or information relating to the national defense, shall be punished by imprisonment for not more than twenty years. This Section of the Act also provides that in time of war, punishment for violation of the provisions of said Section shall be increased to include death or imprisonment for not more than thirty years.

5. Note that 1 (a) prescribes information concerning specific things and places such as a vessel, aircraft, fort, signal station, or code book. However, 1 (b) and 2 (a) are far more general; 1(b) merely saying anything connected with the national defense and 2(a) providing for information relating to the national defense. The easiest method of

understanding the practical effect of the Espionage Act is to read the leading Supreme Court case of GORIN vs. UNITED STATES, which was combined with SALICH vs. UNITED STATES, 312 US 713, decided 13 January 1941. The facts of this case are quite interesting. Gorin was a Russian citizen, and was employed by the Russian Government as its agent in gathering information. He purchased from Salich the contents of over fifty reports relating chiefly to Japanese activities in the United States. These reports were taken from the files of the Naval Intelligence Office at San Pedro, California. Salich was a naturalized Russian-born citizen, but had free access to these records since he was a civilian investigator for that Office. The reports detailed the coming and going on the West Coast of Japanese military and civilian officials, and others whose actions were deemed of possible interest to the Naval Intelligence Office.

6. The defendants were convicted under Sections 1 (b) and 2(a) of the Espionage Act which were the sections just given to <sup>you</sup> in part. They appealed their case, contending that the provisions of the Act are limited to obtaining and delivering information concerning the specifically described places and things set out in Section 1(a) of the Act such as a vessel, aircraft, fort, signal station or code book. They also contend that an interpretation of the statute that the furnishing of any information connected with or related to the national defense other than concerning

these specifically described places and things would be so indefinite that it would render the Act unconstitutional as violative of the due process clause. However, the Supreme Court held that the words of the statute satisfied it that the meaning of national defense in Section 1(b) and § (a) cannot be limited to places and things specifically mentioned in Section 1(a). The Court could find no uncertainty in the Statute which would deprive a person of the ability to pre-determine whether a contemplated action is criminal under the provisions of the law. The delimiting words in the statute are those requiring "intent or reason to believe that the information to be obtained is to be used to the injury of the United States or to the advantage of any foreign nation." The provisions of the Act only relate to those who have acted in bad faith and scienter must be established. In other words, the accused must have known, or by virtue of the circumstances had reason to believe, that the information was to be used to the injury of the United States or to the advantage of a foreign nation.

7. Attorney for the defendants then contended that the evidence failed to support a conclusion that the defendants knew or that they had reason to believe that the information was to be used to the injury of the United States or to the advantage of a foreign nation, and further contended that the evidence did not establish that any of the reports related to or were connected with the national defense.

The Court very quickly disposed of these contentions, stating that reports of this nature are a part of this nation's plan for armed defense. It was not necessary to prove that the information obtained was to be used for the injury of the United States.

8. The trial court determined that whether or not the information obtained by the defendant in this case concerned, related to or was connected with the national defense was a question of fact solely for the determination of the jury. The Supreme Court affirmed this, pointing out that the trial court had given proper instructions as to what constitutes an adequate definition of connected with or relating to national defense. It was stated that, "In short, the phrase 'information connected with the National Defense' as used in the context of the Espionage Act, means, broadly, secret or confidential information which has its primary significance in relation to the possible armed conflicts in which the nation might be engaged. The protected information is readily recognizable from the common experience and knowledge of the average man." The instructions to the jury contained further interesting language: "For from the standpoint of military or naval strategy it might not only be dangerous to us for a foreign power to know our weaknesses and our limitations, but it might also be dangerous to us when such a foreign power knows that we know that they know of our limitations."

9. The Supreme Court then considered the use of the words in the statute of "national defense". The Supreme Court agreed with the Government attorneys that national defense as used in the Espionage Act "is a generic concept of broad connotations referring to the military and naval establishments and the related activities of national preparedness."

10. The fact that Salich had been specifically instructed by his superior not to divulge any information was held admissible as evidence to establish Salich's reason to believe that the information was to be used to the injury of the United States or to the advantage of a foreign nation. You are reminded now that information gained in the course of your work here may not be divulged without specific written authority of the Director, SSJ.

11. At this point motive should be distinguished from intent. Your motive in attempting to publish a book or furnish information to a newspaper may be above reproach. Regardless of your motive, intent, <sup>or reason to believe</sup> is determinative of guilt and it is an established principle that when a man deliberately does an act (such as revealing information which his training or instructions have indicated is not to be disclosed until specifically authorized) he is held, in law, to intend the natural and probable consequences of his act.

12. Here is a summary of the Espionage Act as interpreted by the highest court in the land and as it applies to you:

A. The provisions of the Constitution protecting freedom of speech and press are not violated by the Act.

B. The language of the Act is not so vague or indefinite as to render it unconstitutional. A person can readily predetermine whether a contemplated act is criminal.

C. It is enough if a person does an unauthorized act which might conceivably be of advantage to any foreign government. The presence of possible injury to the United States is not an essential element of this crime. There does not have to be an actual advantage to a foreign government or an actual injury to the United States.

D. The judgment whether 'Now it can be told' is not for the individual to make. The innocuous appearance of the information contained in the unauthorized disclosure is immaterial. Guilt can exist regardless of the value of the information in an unauthorized disclosure.

E. The Act is not rendered inoperative upon the termination of hostilities.

F. Violators of the Act are not limited to the specific places and things set out in Section 1(a) of

G. Serious collateral consequences may result upon conviction under the Act, e.g. deportation in the case of an alien, a disbarment in the case of an attorney.

H. To violate the Act, a person must intend or have reason to believe, that the information he reveals may be used to the advantage of any foreign government (friendly or otherwise) or to the injury of the United States.

I. It is for a jury to decide, as a question of fact, whether or not the information revealed is related to the national defense and the courts have held that a requirement of secrecy may be in the national interest and for the national defense even in time of peace. The fact that you have been instructed not to divulge classified information would be admissible for the jury to consider as evidence in establishing your reason to believe that the information was to be used to the injury of the United States or to the advantage of a foreign nation.

13. Although all men devoutly hope this war will be the last, it is a hope without guarantee of fulfillment. It is a recognized fact that allies may become enemies with the passage of time and Congress foresaw this potentiality when it forbade disclosure, in time of war or peace, of information related to national defense which could be used to the advantage of any foreign government. The Supreme Court has said that one such advantage embraced anything that



would allow a foreign government to check on the efficiency of our methods of warfare. This is precisely the type of information which you must safeguard as long as disclosure has not been authorized. OSS and SSU have developed techniques of warfare, physical, psychological, logistic, etc., the value of which has been amply demonstrated.

14. Your responsibility is continuing responsibility; to safeguard these military advantages for the future of your country. Disclosure of these prohibited topics is forbidden until specific written authorization is given, or until reports on these matters are published with the authority of Congress or the military establishment. The prohibition may continue forever and (this should be noted carefully) does not automatically terminate with the cessation of hostilities, actual or proclaimed. What a future enemy does not know, can be of advantage to this nation - now, a year from now, ten, twenty or thirty years from now.