OGC 8-0980a

5 June 1958

MEMORANDUM FOR: Support Group, Foreign Intelligence

ATTENTION : [redacted]

SUBJECT : Amerasia Documents

Returned herewith is the signed letter to the Department of Justice together with the attachments and Archives files furnished this Office. As we discussed with you on 3 June, the heading of the letter and the signer are the only changes in substance. You will note that the original signed letter and attachments for forwarding to Justice are enclosed for your transmittal.

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/s/

[redacted]

Assistant General Counsel

Attachments

OGC:JGO:jem

Orig & 1 - Addressee
1 - Subject
1 - Signer
1 - Chrono

21 May 1958

MEMORANDUM FOR: Office of General Counsel

ATTENTION: [redacted]

SUBJECT: Amerasia Documents

1. Per my telephone conversation, the attached letter from the Assistant Attorney General and our reply relative to the 16 additional documents are attached. We have had the Archives search the OSS and SSU records and they produced two files which have a bearing on the matter. [redacted] FE, has looked these over and also Mr. Houston's letter of 12 December 1955, copy attached.

2. It is believed that the General Counsel should coordinate in the reply. Copies of all available correspondence on this subject are also attached for your information.

3. We would appreciate the return of the complete file. We wish to retain a complete record, as it is possible that the Department of Justice may make further requests for review of more documents in the future.

[redacted]

Support Group
Foreign Intelligence

Attachments

ASSISTANT ATTORNEY GENERAL
INTERNAL SECURITY DIVISION

Department of Justice

Washington

May 23 1958

Lawrence R. Houston, Esquire
General Counsel
Central Intelligence Agency
Washington 25, D. C.

Dear Mr. Houston:

Reference is made to my letter of March 7, 1958, acknowledging receipt of your letter of February 28, 1948, in which you submitted for our consideration several suggestions for legislation concerning the protection of classified information. You requested our views as to the feasibility of obtaining such legislation and our forecast of its effectiveness if enacted.

This Division has long felt the need for legislation embracing one of your proposals, namely, legislation that would remove any doubt that the espionage laws have application abroad. We have proposed several amendments in this regard, the most recent of which is presently under consideration in the Office of the Deputy Attorney General. The only problems that have arisen concerning our amendment have been questions of form rather than those of substance. I purposely refrained from answering your letter sooner in the hope of being able to inform you that this Department had submitted its amendment of Section 791 of Title 18, United States Code, to Congress. However, it is anticipated that this will be accomplished in the not too distant future.

You pointed out in your letter that it was extremely difficult to prosecute effectively under Sections 793 and 794 of Title 18, United States Code, without compromising classified information. You also stated that Section 798 of Title 18 and Section 2277 of Title 42 attempt to overcome at least a part of this evidentiary problem in that they do not require any showing of intent to injure the United States or aid a foreign power. Accordingly, you felt it might be feasible to develop similar legislation with respect to employees and former employees of Government who disclose classified information relating to intelligence sources and methods.

It is not entirely clear whether your proposal encompasses a statute which would make possible the bringing of prosecution without the necessity of introducing the compromised documents in evidence,

such as, only requiring testimony of its general nature and that it did in fact relate to the national defense. If this proves to be the case, you will be interested in knowing that it has been our view in examining similar legislation in the past that a statute of this kind raises serious constitutional questions under the First and Sixth Amendments. We have found that certain of these proposals, if enacted into law, would result in an unconstitutional deprivation of the rights of the defendant to be fully informed of the nature of the charges against him and to conduct a detailed cross-examination. In addition, inasmuch as the question of whether or not the information does in fact relate to the national defense is a question to be determined by the jury, such legislation might unconstitutionally invade the province of the jury. See Gorin v. United States, 312 U.S. 19. Furthermore, proposals of this kind are also open to widespread criticism as constituting censorship.

On the other hand, your proposal may be addressed solely to the proposition that a statute punishing the willful communication of classified information relating to intelligence sources and methods, without requiring a showing of intent to injure the United States or to gain an advantage for a foreign nation, would be an added step toward the protection of certain official information from unlawful disclosure. Generally speaking, the espionage statutes include within their coverage classified information relating to intelligence sources and methods. Accordingly, if we could establish that an individual disclosing such information knew it to be classified and the person receiving it to be unauthorized, such an offense would also be covered by the espionage statutes. Of course, it is recognized that in certain matters where there is no evidence of subversive intent, e.g., "leakage" cases, the chances of successful prosecution would be enhanced in a proceeding under a statute similar to the one you have proposed.

In the circumstances, then, while we believe that legislation of the type which you suggest might well prove helpful, it is extremely difficult to offer any constructive comment with respect to the feasibility or effectiveness of legislation in this field without the benefit of a specific draft thereof.

You further stated in your letter that an injunction provision, similar to Section 2280 of Title 42, United States Code, directed against anyone who has violated or is about to violate any provisions relating to the protection of confidential information, would, under certain circumstances, be useful against individuals who threaten or otherwise give advance warning that they might disclose such information. You pointed out that it would be extremely

important to provide that the injunction could be obtained without publicly divulging the information sought to be protected.

It appears that a statute incorporating the latter element might also be subject to widespread criticism as constituting censorship. The argument against such a statute could be that it permits the Government to obtain an injunction regardless of whether the information to be disclosed does, in fact, have any security significance. However, as I have previously indicated, it is difficult to draw any definite conclusions with respect to this type of statute without studying the exact language to be used therein. We would, of course, be pleased to examine any future drafts embodying your proposals.

You may be interested in knowing that Section 2280 of Title 42 was recently invoked, for the first time, to restrain a group of pacifists from sailing their ketch, "The Golden Rule", into the Eniwetok nuclear testing grounds. On May 1, 1958, they defied the order by attempting to leave Honolulu for the restricted area and were convicted on charges of criminal contempt of court.

Sincerely,

J. Walter Yeagley

J. WALTER YEAGLEY
Acting Assistant Attorney General

Sec. 3

LKH
JSW

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

March 7 1958

Address Reply to the
Division Indicated
and Refer to Initials and Number

Lawrence R. Houston, Esquire
General Counsel
Central Intelligence Agency
Washington 25, D. C.

Dear Mr. Houston:

I have examined with considerable interest the suggestions for legislation set forth in your letter of February 28, 1958.

After we have completed our study of your proposals, some of which are similar to those we have had under consideration in this Division, we will communicate with you further with respect thereto. If, at that time, it is felt that further discussion is desirable we would be pleased to have representatives of this Division confer with members of your staff.

Sincerely,

J. Walter Yeagley

J. WALTER YEAGLEY
First Assistant
Internal Security Division

OGC 8-0406

Mr. J. Walter Yeagley
First Assistant
Internal Security Division
Department of Justice
Washington 25, D. C.

Dear Mr. Yeagley:

The Central Intelligence Agency has a basic interest in the protection of properly classified information in the hands of the Government. Of special concern is the protection of intelligence sources and methods which presents a specialized problem of security over and above that of information which is itself confidential.

Studying the existing legislation designed to protect confidential information, from our particular point of view we believe there are certain areas where new or amended legislation would increase the possibility of effective action. We believe the primary target should be employees and ex-employees of the Government who disclose information entrusted to them in the course or as a result of their employment and which they have reason to believe is classified.

Under sections 793 and 794 of Title 18 of the United States Code experience has shown that in most cases it is impossible to prosecute effectively without compromising classified information. Even if the Government's case can be made without compromise, the defense may demand production of information deemed pertinent by the court which the Government cannot publicly release; therefore, the prosecution fails. There are two enactments directed towards specialized fields which attempt to overcome at least a part of this evidentiary problem.

One is in the Atomic Energy Act in Chapter 18 of which section 227 relates to any employee who "knowingly communicates . . . any Restricted Data." Section 798 of Title 18 has to do with communications intelligence as defined in that section and does not require any showing of intent to injure the United States in the case of classified communications intelligence. It is our feeling that it might be feasible to develop similar legislation concerning classified information relating to intelligence sources and methods and provide that in the case of employees and ex-employees the disclosure be made wilfully and with knowledge or reason to believe that it was classified information without requiring a showing of intent to injure the United States or aid a foreign power.

A second area involves the problem of persons who threaten or otherwise give advance warning that they may disclose confidential information. We have faced such situations from time to time and find no satisfactory remedy in any criminal statutes. We have noted with interest section 230 of the Atomic Energy Act of 1954, as amended, which provides for an injunction to enforce compliance with the provisions of that act by anyone who has engaged or is about to engage in a violation of the act. A similar injunctive provision directed against anyone who has violated or is about to violate any acts relating to the protection of confidential information would be a useful provision under certain circumstances. Obviously, it would be important to provide that the injunction could be obtained without publicly divulging the information sought to be protected. We are not aware of any such provision at present with the possible exception of section 3043 of Title 18 of the United States Code, which might be a basis for a remedy in the nature of a peace bond. Insofar as we know this provision has never been used for this purpose.

Another aspect of interest to this Agency has to do with the present possible limitations on jurisdiction in the espionage acts of Title 18 arising out of the wording of section 791. We believe it should be clearly provided that the espionage laws apply to United States nationals and to aliens for acts of espionage against the United States wherever committed. We are aware that there is doubt resulting from certain judicial interpretations that section 791 would prevent extraterritorial application of the espionage provisions, but we feel any such doubt should be resolved to provide clearly for prosecution for acts committed abroad.

We would greatly appreciate the consideration of your technicians and experts on the foregoing suggestions and your comments as to feasibility of obtaining such legislation and your forecast of its effectiveness if obtained. If you wish us to furnish more information in connection with our experience in the problem of protecting confidential information, please call on us and we will be glad to work with your staff in drafting legislation, particularly as it might relate to intelligence sources and methods.

Sincerely yours,

SIGNED

Lawrence R. Houston
General Counsel

OGC:LRH:jeb

Executive to DCI
Director of Security
Legislative Counsel
General Counsel chrono
Subject-Security 3

cc: Mr. Robert Dechert
General Counsel
Department of Defense